

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**Case No.: 18-CA-236643
18-CA-238989
18-CA-247528**

SUNBELT RENTALS, INC.

Respondent

And

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 139,
AFL-CIO**

Charging Party

**Place: Milwaukee, WI
Date: 12/16/19
Pages: 1-250
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OFFICIAL REPORTERS

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1 UNITED STATE OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 18 - SUBREGION 30
4

5 In the Matter of:)
6 SUNBELT RENTALS, INC.,)
7 Respondent,)
8 and)
9 INTERNATIONAL UNION OF) Cases 18-CA-236643
10 OPERATING ENGINEERS LOCAL 139) 18-CA-238989
11 AFL-CIO,) 18-CA-247528
12 Charging Party.)
13
14
15

16 The above-entitled matter came on for
17 hearing pursuant to notice, before
18 ADMINISTRATIVE LAW JUDGE MICHAEL ROSAS, at
19 310 West Wisconsin Avenue, Suite 450W,
20 Milwaukee, Wisconsin, on Wednesday, December 16,
21 2019, at 10:00 a.m.
22
23
24
25

A P P E A R A N C E S

On behalf of the General Counsel:

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* * * *

I N D E X

VOIR

WITNESS

DX

CX

RDX

RCX

DIRE

Michael Ervin

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(resumed)

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(resumed)

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(resumed)

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(resumed)

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(resumed)

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107

(resumed)

109

125

(resumed)

125

219

E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

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E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

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P R O C E E D I N G S

(Time Noted: 10:00 a.m.)

JUDGE ROSAS: On the record in the matter of Sunbelt Rentals, Inc. and International Union of Operating Engineers Local 139 AFL-CIO, cases 18-CA-236643, 238989 and 247528. This is a proceeding of the National Labor Relations Act, before the Administrative Law Judge Michael A. Rosas, from Washington, DC, Division of Judge's Office.

Counsel for the parties state your appearances.

MR. WIESE: On behalf of the General Counsel, Tyler Wiese, W-I-E-S-E.

JUDGE ROSAS: Charging party?

MR. RYAN: Patrick Ryan on behalf of charging party, Local 139.

JUDGE ROSAS: Address, firm?

MR. RYAN: Oh, I'm sorry. Baum, Sigman, Auerbach & Neuman, 200 West Adam Street, Suite 2200, Chicago, Illinois 60606.

JUDGE ROSAS: Respondent?

MS. HILL: Respondent's attorney is Patricia Hill, H-I-L-L, with Smith Gambrell & Russell, 50 North Laura Street, Suite 2600,

1 Jacksonville, Florida 32202.

2 JUDGE ROSAS: All right. Counsel and
3 General Counsel, you have handed up the set of
4 the formal papers. Can you identify them for
5 the record?

6 MR. WIESE: Yes, your Honor. I have
7 introduced a set of the formal papers. General
8 Counsel 1A through 1KK inclusive. 1KK being the
9 index and description of the formal documents.

10 JUDGE ROSAS: Okay. Has everybody had
11 an opportunity to review those?

12 MS. HILL: I have.

13 JUDGE ROSAS: Okay. Any objection?

14 MR. RYAN: No objection.

15 JUDGE ROSAS: Okay. So General
16 Counsel's formal papers are received into
17 evidence as stated.

18 (GCX 1A-1KK received.)

19 JUDGE ROSAS: All right. Before we
20 proceed, do I understand there are some
21 stipulations?

22 MR. WIESE: Yes, your Honor. The
23 parties were able to reach a stipulation which I
24 have marked as Joint Exhibit 1. It resolves the
25 supervisory status issues that were raised by

1 respondent's most recent answer. It includes
2 dates that the individuals in question had
3 the -- had their positions. The most notable
4 change from the answer -- or excuse me -- from
5 the complaint is that the General Counsel has
6 withdrawn Michael Schwager as an individual with
7 supervisory authority.

8 JUDGE ROSAS: Okay. Is there anyone
9 denied in the initial complaint that is still
10 denied supervisory allegations?

11 MR. WIESE: No. No, your Honor. This
12 resolves all supervisory status allegations.

13 MS. HILL: One exception is that
14 especially for Mr. Bogard -- Bogardus, excuse
15 me, that his time frame is a little different
16 from originally stated if I am not mistaken,
17 correct? And the same for Mr. Pender. He just
18 said -- you know, I just want to make sure that
19 you know, the parties acknowledge the fact that
20 the time frame for these supervisory status is
21 different from what was in the complaint, okay.

22 MR. WIESE: That's correct. This is
23 the parties' agreement as to the positions that
24 these individuals held during the time frames
25 indicated in the stipulation and that during

1 those times that these individuals held 211
2 authority.

3 JUDGE ROSAS: Okay. So that's noted.
4 All right. Before we proceed, is there going to
5 be a request for a sequestration order in this
6 case?

7 MR. WIESE: Yes, your Honor.

8 JUDGE ROSAS: All right. So counsel
9 having invoked that rule, it will be invoked and
10 requiring the witnesses be sequestered. Meaning
11 that all persons who are going to testify in
12 these proceedings, specific exceptions, may only
13 be present in hearing when they are giving
14 testimony.

15 The exceptions are alleged
16 discriminatee, natural persons who are parties,
17 representatives of natural parties and a person
18 who is shown by party to be essential to the
19 presentation of the party's cause. They may
20 remain in the hearing room even if they are
21 going to testify or have testified; however,
22 such individuals may not remain in the hearing
23 room when other witnesses are being called by
24 the same party to testify to matters that are in
25 dispute that those witnesses will be expected to

1 testify about.

2 Okay. I believe we addressed some of
3 that in the conference call. We can go over it
4 again as the issues come up. There is certain
5 exceptions that I have granted over the years
6 with respect to complex matters; but otherwise,
7 if it's someone that you are going to be calling
8 that your designated individual is also going to
9 follow and testify about, corroborating or
10 accumulatively or whatever the case may be and
11 the matter is something that I will need to make
12 credibility resolution about, that individual
13 will be expected to step out. Someone else on
14 behalf of the party can be designated for that
15 individual in lieu thereof while that is
16 transpiring.

17 Okay. So from this point on until the
18 hearing is finally closed, no witness may
19 discuss with other potential witnesses either
20 the testimony that they have given or that they
21 intend to give. The best way to avoid any
22 problems is simply not to discuss the case with
23 any other potential witnesses until after the
24 hearing is completed under the rule as applied
25 by the Board with one exception. Counsel for a

1 party may not in any way manner including the
2 showing of transcripts inform a witness about
3 the content of testimony given by a preceding
4 witness without my express permission.

5 The exception is that counsel may
6 inform a witness' -- counsel's own witness of
7 the content of testimony including the showing
8 of transcripts given by a witness for the
9 opposing side in order to prepare for rebuttal
10 of such testimony. Counsel are expected to
11 police the rule, bring any violations or issues
12 with respect to it to my attention immediately.

13 It is the obligation of counsel to
14 inform potential witnesses who are not now
15 present in the hearing room of their obligations
16 under the rule. Any questions?

17 MR. RYAN: No.

18 MS. HILL: Yes. All right. You have
19 two witness rooms over there. Have they been
20 designated?

21 JUDGE ROSAS: Let's go off the record.

22 (Whereupon, a discussion was had
23 off the record.)

24 JUDGE ROSAS: All right. Back on the
25 record. So before we continue, we have had the

1 matter of petition to revoke subpoena --
2 subpoenas served by the General Counsel and by
3 the Charging Party. The matter was referred to
4 Judge Sharon Steckler for ruling,
5 recommendation, special master report. She
6 issued a first part thus far.

7 My understanding is she is going to
8 continue to work on it to the best of her
9 ability based on the volume and from what it
10 sounds like, it's going to take some time. I
11 appreciate her working over the weekend to do
12 that in order for us to try to make some gains
13 and progress in this case.

14 Is there anything -- so my
15 understanding from reading the first part of her
16 report is that there are no issues with respect
17 to the production by the Charging Party for the
18 allegedly privileged material on their part;
19 however, respondent there is some issues there
20 that Judge Steckler has. That is still
21 outstanding.

22 Now I don't know what's your position,
23 General Counsel, at this juncture? You may
24 recall my initial conference call that, you
25 know, it's my cardinal rule to proceed. I don't

1 make these rules up. They don't always work in
2 great synchronicity but this is what it is and
3 you are entitled to all of the documentation
4 before you close your prime facia case; so
5 that's the best I can tell you.

6 And as far as any other requests, you
7 know, everything would be reserved at this
8 juncture and you have to proceed the best you
9 can and when you get to a juncture where you
10 believe you may have a problem with proceeding
11 further, obviously you'll raise that and I'll
12 make a determination at that point. All right.

13 Are you ready to call your first
14 witness or you are ready for an opening? Do you
15 have an opening?

16 MR. WIESE: I do have an opening, your
17 Honor, but before I proceed to my opening, just
18 a point of clarification with regard to the
19 subpoenas. To the extent there are production
20 issues not related to privilege but documents
21 that we believe exist that were not -- may not
22 have been provided pursuant to the subpoena, do
23 you want me to raise those issues with you or
24 are those issues appropriately raised with Judge
25 Steckler?

1 JUDGE ROSAS: That has nothing to do
2 with privilege, correct?

3 MR. WIESE: That's correct.

4 JUDGE ROSAS: So that's before me.

5 MR. WIESE: Okay. Okay.

6 JUDGE ROSAS: Okay.

7 MR. WIESE: Well, your Honor, with
8 respect to that point, we have received some
9 initial production from respondent. It's being
10 reviewed by my colleagues on the other side of
11 the door. We -- you know, my intent is once
12 that initial review is completed to raise, you
13 know, any issues if they exist with regard to
14 production at that time.

15 JUDGE ROSAS: Okay. All right. So,
16 General Counsel, you can give a brief opening,
17 Charging Party, you can follow. Respondent, you
18 would follow Charging Party. Both of you can
19 opt to waive or reserve until the opening of
20 your respective cases, if any, so that's where
21 we are. General Counsel?

22 MR. WIESE: Thank you, your Honor.
23 Your Honor, this is a case with two parts. The
24 first part of this case involves respondent's
25 surface bargaining and with respect to the

1 surface bargaining in this case. This isn't a
2 classic proposals based surface bargaining case.
3 The reason for this is, as the evidence will
4 demonstrate, is the respondent so frustrated the
5 bargaining by its continual delays in scheduling
6 negotiations and its delays during the parties'
7 negotiations, that the parties could not even
8 get to a point where they could engage in an
9 honest exchange of proposals.

10 The evidence will demonstrate that the
11 bargaining began on May 22nd of 2018 and
12 concluded with regard to collective bargaining
13 negotiations on July 9th of 2019. During this
14 period of time, respondent thwarted the
15 potential for any productive negotiations
16 through a pattern of delay and unresponsiveness.
17 The evidence will show that this delay began at
18 the very outset of bargaining.

19 The union in this case was certified in
20 March of 2018, and after being certified, the
21 union sent an initial request for bargaining
22 shortly thereafter. Respondent's response to
23 that initial request for bargaining was that it
24 can only begin bargaining on May 22nd of 2018.
25 Its justification for doing so was that it was

1 too busy to meet.

2 This too busy excuse, as the evidence
3 will demonstrate, became a mantra for
4 respondent, one that it relied on continuously
5 in response to the union's request to engage in
6 more frequent bargaining. When the union would
7 propose to meet the week following that session,
8 respondent would state that it was too busy.

9 When the union would propose to meet on
10 consecutive days to accommodate respondent's
11 travel schedules, the evidence will demonstrate
12 again that respondent claimed it was too busy.

13 When respondent would agree to
14 sessions, its negotiators would often show up
15 late or cancel sessions with little notice for
16 suspicious reasons; and in the end, the evidence
17 will demonstrate that between the union's
18 March 2018 certification and July 2019,
19 respondent only attended 13 bargaining sessions
20 with the union. Over a period of 17 months,
21 only 13 bargaining sessions took place,
22 justified by a facially unlawful busy negotiator
23 defense.

24 The evidence will further demonstrate,
25 your Honor, that when respondent did actually

1 appear for bargaining, it engaged in conduct
2 that demonstrated an unwillingness to bargain in
3 good faith. The evidence will show that this
4 included taking lengthy and unproductive
5 caucuses in which respondent would be away from
6 the table for hours and come back with no new
7 proposals.

8 During these lengthy caucuses, the
9 evidence will demonstrate that members of the
10 union's bargaining team routinely saw members of
11 respondent's negotiating team engaged in their
12 day-to-day work. The evidence will show that
13 respondent often ended sessions early claiming,
14 again, that it was too busy to continue
15 negotiating.

16 At later sessions as the union
17 attempted to transition discussion toward more
18 substantive issues such as wages, respondent
19 repeatedly stated that it was unwilling to
20 discuss these items until, quote, "all language
21 issues were figured out." When the union
22 subsequently tried to resolve language issues,
23 respondent's chief negotiator, Pat Hill, stated
24 that there were unwritten articles missing from
25 the union's proposals and then failed to

1 identify what those articles were.

2 Finally, the evidence will demonstrate
3 that respondent, without any justification
4 whatsoever, refused to agree to dues checkoff.
5 These are all classic indicia of surface
6 bargaining will be proven by clear evidence in
7 the record in this case.

8 The second half of this case, your
9 Honor, rests on respondent's unilateral
10 elimination of the entire bargaining unit at
11 issue in August of 2019. The termination of
12 this unit was unlawful under two separate
13 theories. First, that it was unlawfully
14 motivated by union animus and the union's charge
15 filing activities with the Board; and second,
16 because respondent engaged in this conduct
17 without producing notice and an opportunity to
18 bargain with the union.

19 With regard to the motive analysis, the
20 evidence will demonstrate that in response to
21 respondent's unlawful conduct at the table, the
22 union engaged in a publicity campaign involving
23 bannerering at customers' job sites and picketing
24 at other Sunbelt locations. These economic
25 weapons, as respondent will undoubtedly know,

1 were effective in putting pressure on Sunbelt at
2 the bargaining table; however, rather than
3 exercising any lawful response, the evidence
4 will demonstrate that Sunbelt simply eliminated
5 the bargaining unit and respondent's
6 justification for this was that it was due to
7 the union's activity and its effect on the
8 employer.

9 In other words, because of the union's
10 conduct, respondent terminated the represented
11 employees who never engaged in any of the
12 union's publicity campaigns.

13 The evidence will further demonstrate
14 that this elimination of the unit was driven by
15 animus toward the union employees. Respondent
16 has numerous facilities all of which have
17 allegedly been affected by the union's publicity
18 campaign, yet despite supposedly heavy losses,
19 respondent only chose to target the two
20 represented employees in the union's
21 jurisdiction.

22 The evidence will further demonstrate
23 that there is little to no explanation as to why
24 these two employees were targeted as opposed to
25 the many other unrepresented Sunbelt employees

1 and that since these employees were terminated,
2 that respondent has continued to do the same
3 work using nonbargaining unit employees at the
4 facility at issue in this case and at other
5 nearby facilities.

6 The evidence will further demonstrate
7 that respondent's termination of the unit
8 independently violated the Act because of
9 respondent's failure to bargain about the
10 decisions. The type of transition here is
11 clearly amenable to the bargaining process.
12 Respondent continues to engage in the same work
13 and is simply using different nonunion
14 employees.

15 There was no large scale restructuring
16 of the business nor did it amount to closure of
17 the facility. It simply amounted to the
18 transfer of work from union employees to
19 nonunion employees, an action that triggers
20 respondent's legal obligations to bargain with
21 the union that represents its employees.

22 The evidence will show that respondent
23 ignored this obligation, that it announced the
24 decision on August 7, 2019 as a fait accompli
25 and thereafter implemented it on August 8th of

1 2019. Accordingly, under either a motive base
2 theory or a bargaining theory the evidence will
3 demonstrate that respondent's elimination of the
4 bargaining unit was unlawful. Thank you.

5 JUDGE ROSAS: Charging party, anything?

6 MR. RYAN: Your Honor, I had a short
7 opening statement but general counsel's was much
8 more detailed so I will just opt out at this
9 time.

10 JUDGE ROSAS: What's your pleasure?

11 MS. HILL: Waive also for the record.

12 JUDGE ROSAS: You are waiving or
13 reserving?

14 MS. HILL: Reserving.

15 JUDGE ROSAS: Reserving until the
16 opening of your case. Is there anything else
17 before you call your first witness?

18 MR. WIESE: No, your Honor.

19 JUDGE ROSAS: Okay. Let's do it.

20 MR. WIESE: Counsel for the General
21 Office calls Michael Ervin to the stand.

22 (Witness sworn.)

23 JUDGE ROSAS: Please have a seat and
24 state and spell your name and provide us with an
25 address.

1 THE WITNESS: Michael Ervin,
2 M-I-C-H-A-E-L, last name E-R-V-I-N.

3 JUDGE ROSAS: Address?

4 THE WITNESS: 8449 Westminster Drive,
5 Sturtevant, Wisconsin 53177.

6 MICHAEL ERVIN,
7 after being first duly sworn, deposeth and saith
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. WIESE:

11 Q. Mr. Ervin, what is your current
12 occupation?

13 A. I am an organizer for the Operating
14 Engineers Local 139.

15 Q. And what do you do as an organizer for
16 Local 139?

17 A. Basically trying to gain more
18 membership, market share whether it be through
19 individuals and/or contractors and employers.

20 Q. As an organizer, do you have any role
21 in collective bargaining negotiations?

22 A. Yes.

23 Q. Can you explain what that role is?

24 A. With the units that I have obtained, I
25 am involved in those negotiations.

1 Q. How long have you been an organizer
2 with Local 139?

3 A. A little over six years.

4 Q. Do you hold any other positions with
5 Local 139?

6 A. I do not.

7 Q. And during your time working for
8 Local 139, how many collective bargaining
9 agreements have you been involved with?

10 A. Three.

11 Q. Are you familiar with the respondent in
12 this case Sunbelt Rentals, Inc.?

13 A. Yes.

14 Q. How are you familiar with them?

15 A. The Franksville location is the
16 location that voted the union in back in March
17 of 2018.

18 Q. Were you involved in organizing that
19 unit?

20 A. Yes.

21 Q. And have you participated in collective
22 bargaining negotiations with respect to the
23 Franksville unit?

24 A. Yes.

25 Q. Let me show you what's been previously

1 marked as General Counsel Exhibit 2.

2 JUDGE ROSAS: Let's go off the record.

3 (Whereupon, a discussion was had
4 off the record.)

5 JUDGE ROSAS: All right. Back on the
6 record.

7 BY MR. WIESE:

8 Q. Mr. Ervin, I'd like to direct your
9 attention to what's previously been marked as
10 General Counsel Exhibit 2. Do you recognize
11 that document?

12 A. Yes.

13 Q. What is it?

14 A. It's the certification of the
15 Franksville -- Sunbelt Franksville bargaining
16 unit.

17 MR. WIESE: I'll offer General Counsel
18 Exhibit 2.

19 JUDGE ROSAS: Any objection?

20 MS. HILL: No.

21 JUDGE ROSAS: General Counsel's 2 is
22 received.

23 (GCX 2 received.)

24 BY MR. WIESE:

25 Q. Mr. Ervin, have you participated in

1 collective bargaining negotiations with Sunbelt
2 for this unit?

3 A. Yes.

4 Q. In what capacity?

5 A. Pretty much the lead spokesperson.

6 Q. How many of the party's bargaining
7 sessions have you attended?

8 A. 13.

9 Q. Have you missed any sessions?

10 A. Yes.

11 Q. How many have you missed?

12 A. Two.

13 Q. At the sessions you have attended, who
14 served as the primary negotiator for the
15 employer?

16 A. Pat Hill.

17 Q. Who else was present for the employer?

18 A. Regional vice president Jason Mayfield,
19 regional manager Robert Bogardus and the profit
20 center manager Brian Anderson.

21 Q. Did any of these individuals that you
22 named take an active role in negotiations?

23 A. A little bit.

24 Q. Who?

25 A. Mostly Jason Mayfield.

1 Q. Who was in attendance from the union
2 besides yourself?

3 A. Our chief of staff, Steve Buffalo; our
4 district manager, Greg West; our business rep,
5 Dan Marsolek, and bargaining unit member, Jamie
6 Smith.

7 Q. Who served as the chief note taker for
8 the union?

9 A. Greg West.

10 Q. I'd like to direct your attention now
11 to General Counsel Exhibit 3. Do you recognize
12 this document?

13 A. Yes.

14 Q. What is it?

15 A. It's the letter that I sent to regional
16 manager Bo Bogardus, Robert Bogardus, asking for
17 negotiation dates starting the 9th of
18 April 2018.

19 Q. Why was the union requesting to begin
20 negotiations at this time?

21 A. To get the process started.

22 MR. WIESE: I'll offer General Counsel
23 Exhibit 3.

24 MS. HILL: No objection.

25 JUDGE ROSAS: Respondent's

1 3 -- General Counsel's 3 is received.

2 (GCX 3 received.)

3 BY MR. WIESE:

4 Q. I'd like to direct your attention to
5 General Counsel Exhibit 4.

6 A. Uh-huh.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. What is it?

10 A. It's the E-mail from Pat Hill letting
11 us know that they will not be able to
12 negotiate -- start negotiations until May 22nd
13 of 2018.

14 Q. And was this the first communication
15 that you received from the employer regarding
16 scheduling negotiations?

17 A. Yes.

18 MR. WIESE: I'll offer General Counsel
19 Exhibit 4.

20 MS. HILL: No objection.

21 JUDGE ROSAS: GCX 4 is received.

22 (GCX 4 received.)

23 BY MR. WIESE:

24 Q. Mr. Ervin, did the parties end up
25 meeting on May 22nd of 2018?

1 A. Yes. Yes.

2 Q. Did the parties meet on time that day?

3 A. Yes.

4 Q. Approximately what time did the
5 negotiations begin?

6 A. 8:00 o'clock.

7 Q. I'd like to direct your attention to
8 General Counsel Exhibit 15 which is going to be
9 down in the stack a little bit buried. It's
10 about two-thirds of the way through the stack.

11 A. I got it.

12 MR. WIESE: Does everybody else have
13 15?

14 MS. HILL: Yes. I just noticed I don't
15 have a 14.

16 MR. WIESE: Right.

17 MS. HILL: All right. I just want to
18 be sure first time I noticed there wasn't one.

19 MR. WIESE: Uh-huh.

20 BY MR. WIESE:

21 Q. Mr. Ervin, do you recognize this
22 document?

23 A. Yes.

24 Q. Okay. What is it?

25 A. It's negotiating committee ground rules

1 that we proposed to Sunbelt on May 22, 2018.

2 Q. When did the union propose these ground
3 rules during negotiations?

4 A. At the beginning of the session.

5 Q. Who presented these proposed rules?

6 A. I did.

7 Q. What response, if any, do you recall
8 the employer having when you presented these
9 ground rules?

10 A. That they will not enter into any
11 negotiating ground rules.

12 MR. WIESE: I'll offer General Counsel
13 Exhibit 15.

14 MS. HILL: I just want to be sure --

15 JUDGE ROSAS: Voir dire?

16 MS. HILL: Yes.

17 VOIR DIRE EXAMINATION

18 BY MS. HILL:

19 Q. This No. 3 on here says that the
20 meetings will alternate between Janesville Sand
21 & Gravel and the union's location of choice?

22 A. Yes. It was a typo back then that you
23 referenced.

24 MS. HILL: Okay. I just want to be
25 sure. No objection.

1 JUDGE ROSAS: General Counsel's 15 is
2 received.

3 (GCX 15 received.)

4 DIRECT EXAMINATION (resumed)
5 BY MR. WIESE:

6 Q. Mr. Ervin, after the union presented
7 these ground rules, what do you recall the
8 parties discussing next?

9 A. We discussed or I gave them our
10 comprehensive proposal without economics.

11 Q. And if you direct your attention to
12 General Counsel Exhibit 6A, do you recognize
13 this document?

14 A. Yes.

15 Q. Okay. And what is it?

16 A. It's the comprehensive proposal that
17 Dan Marsolek and myself put together with
18 similar language from other locals that Sunbelt
19 is assigned to.

20 Q. And who presented this proposal to the
21 employer during bargaining?

22 A. I did.

23 Q. And when you presented this proposal to
24 the employer in bargaining, what, if any,
25 response did they have to it?

1 A. That they needed time to go through it.

2 Q. Who said that?

3 A. Pat Hill.

4 MR. WIESE: I'll offer General Counsel
5 Exhibit 6A.

6 MS. HILL: No objection.

7 JUDGE ROSAS: General Counsel 6A is
8 received.

9 (GCX 6A received.)

10 BY MR. WIESE:

11 Q. I am going to show you what's been
12 marked as or I'd like to direct your attention,
13 actually to General Counsel Exhibit 7A.

14 A. Okay.

15 Q. Okay. Do you recognize this document?

16 A. Yes.

17 Q. What is it?

18 A. It's some proposals that Pat Hill gave
19 us on behalf of Sunbelt.

20 Q. When were these proposals given?

21 A. May 22, 2018.

22 Q. Whose handwriting is on this document?

23 A. Mine.

24 Q. Okay. And looking in the upper
25 left-hand corner of the pages of this exhibit, I

1 see some underlying numbers and some other
2 numbers that aren't underlined. Do you see
3 those numbers?

4 A. Yes.

5 Q. What do those numbers signify?

6 A. Those numbers signify the article that
7 the proposal from Sunbelt was originally from
8 our proposal.

9 Q. And when you say your proposal, are you
10 talking about General Counsel Exhibit 6A?

11 A. Yes.

12 MS. HILL: Okay. I have a bit of a
13 concern. I see a reference to Mr. Ryan on 3 of
14 4. I want to make sure that this is not to be
15 considered privileged.

16 MR. RYAN: Correct. I mean, to the
17 extent that it was privileged, we produced them
18 to the Region as part of our case so we are not
19 asserting --

20 MS. HILL: Okay. I just want to be
21 sure.

22 MR. RYAN: Thank you.

23 JUDGE ROSAS: You are talking about 7A?

24 MS. HILL: Yes. It's on Page 3 of 4,
25 just about the middle of the page it references

1 Mr. Ryan out of abundance of caution.

2 MR. RYAN: Thank you.

3 MS. HILL: Go ahead.

4 JUDGE ROSAS: Are you finished with
5 the --

6 MS. HILL: It was clarified.

7 MR. WIESE: No, your Honor. I do have
8 a few more things I'd like to clarify in this
9 document.

10 BY MR. WIESE:

11 Q. Sir, if you go to Page 1 of the
12 document, the letters TA, what do those signify?

13 A. Tentatively agreed upon.

14 JUDGE ROSAS: Hold on one second. Just
15 so we can get a ground rule down, when you have
16 enough of a foundation as to what a document is,
17 without actually describing the content of it,
18 which may or may not be an issue, it needs to be
19 offered at that time because I don't want
20 matters being read into the record that are not
21 going to be going into evidence, so you are
22 offering this document?

23 MR. WIESE: Understood. Yes, I am,
24 your Honor.

25 JUDGE ROSAS: Okay. Any objection,

1 Counsel, to 7A?

2 MS. HILL: No objection. Other than
3 this was not in the format that Sunbelt had
4 given it to the --

5 JUDGE ROSAS: Go ahead. Do you want to
6 ask the witness a question or -- Counsel?

7 MS. HILL: Okay. I can ask Mr. -- Mr.
8 Ervin, when Sunbelt presented this document that
9 has been marked as General Counsel Exhibit 7A,
10 was it a two-sided document?

11 THE WITNESS: No.

12 MS. HILL: Did it have any of the
13 handwriting that you see on there?

14 THE WITNESS: No. That's my
15 handwriting.

16 MS. HILL: Okay. All right. Thank
17 you. Oh, and by the way, this is cut off at the
18 top in the upper right. What does that say?

19 THE WITNESS: Sunbelt's.

20 MS. HILL: Thanks.

21 JUDGE ROSAS: So you are offering this
22 for what purpose? For the original version
23 without the writing or the writing to reflect
24 something documented by the witness you need to
25 when you completed your questioning -- well,

1 actually you need to tell me now.

2 MR. WIESE: Okay.

3 JUDGE ROSAS: What are you offering
4 this for? Is the writing important?

5 MR. WIESE: Yes, it is, your Honor. I
6 am offering it with respect to the entire
7 document including the handwriting on the
8 document.

9 JUDGE ROSAS: Okay. Counsel, do you
10 have an issue with that? He says that's what
11 this witness wrote on there. Do you want to
12 question him about that?

13 MS. HILL: Question which one? If this
14 is going to be offered for purposes of
15 refreshing the recollection of the witness, I
16 mean, that's one thing. We have produced the
17 original of all of these proposals, these four
18 and everything else, so I am not exactly sure
19 what the purpose is for having this handwriting
20 on it.

21 MR. WIESE: Well, as we'll get into
22 later and -- well, let me ask you, your Honor,
23 do you want me to make relevance arguments in
24 front of the witness or how do you like that
25 issue being handled?

1 JUDGE ROSAS: No. I think it's simply
2 a question. I mean, this happens all the time
3 but the question becomes because oftentimes it's
4 a matter of the document being received, deemed
5 in its original version without the writing,
6 just ignore the writing, okay. In this
7 instance. You want the writing considered.

8 MR. WIESE: Yes, your Honor.

9 JUDGE ROSAS: Okay. What's the purpose
10 of that? As counsel indicated, is it for past
11 recollection recorded?

12 MR. WIESE: No. It's for -- it's
13 relevant evidence that will be established
14 through later testimony and documents. The fact
15 that --

16 MS. HILL: I'm sorry. I apologize.

17 MR. WIESE: Is that there is article
18 numbers being written, you know, that all of
19 this is needing to be recorded as bargaining is
20 occurring is something that is important.

21 JUDGE ROSAS: Sir, when did you make
22 these notations on this document?

23 THE WITNESS: During our caucus.

24 JUDGE ROSAS: Okay. And was this
25 something that you routinely do?

1 THE WITNESS: Uh-huh.

2 JUDGE ROSAS: During bargaining?

3 THE WITNESS: Yes, sir.

4 JUDGE ROSAS: Write on the proposal
5 that's been given to you?

6 THE WITNESS: Yes, sir.

7 JUDGE ROSAS: All right. So it sounds
8 like the witness has established a foundation
9 for it essentially being in the context of
10 bargaining a business record, if you will,
11 contemporaneous business record, okay, as close
12 as those come under 803(6) Federal Rules of
13 Evidence so I am going to receive it. Do you
14 have an objection?

15 MS. HILL: For that purpose, no
16 objection, your Honor. However --

17 JUDGE ROSAS: He says it's
18 contemporaneous with the meetings.

19 MS. HILL: But the best evidence based
20 on what the General Counsel's attorney said it
21 appears they want to show all the many, many
22 written proposals that Sunbelt gave to the union
23 over the course of the negotiation sessions and
24 the best evidence of that would be the clean
25 copies so if it's going to be his notes,

1 something different --

2 JUDGE ROSAS: If they don't put in a
3 clean copy you will, right?

4 MS. HILL: Yes, sir.

5 JUDGE ROSAS: All right. So General
6 Counsel 7 is received.

7 MR. WIESE: 7A.

8 JUDGE ROSAS: 7A.

9 (GCX 7A received.)

10 BY MR. WIESE:

11 Q. Mr. Ervin, going back to the
12 handwriting on this document, the letters TA
13 what does that signify?

14 A. Tentatively agreed upon.

15 Q. Okay. And the date next to that, what
16 does that signify?

17 A. That was the date it was tentatively
18 agreed upon.

19 Q. Okay. And when did you add those
20 notations?

21 A. That notation was added on 6 -- that's
22 a typo -- 6/26 of '18.

23 Q. Okay. And what happened that day?

24 A. That's the day that we agreed upon this
25 document here that was given to us on May 22,

1 2018.

2 Q. So besides these two proposals that we
3 discussed, what else do you recall the parties
4 discussing at the beginning of the negotiations
5 on May 22nd?

6 A. They originally wanted us to caucus in
7 our cars.

8 Q. And how did that topic come about?

9 A. Pat Hill had said that they didn't have
10 the room and we had originally caucused in our
11 cars until Steve Buffalo raised the issue and
12 then they went to another location to caucus.

13 Q. Did the -- in response to that, did
14 anyone from the union raise an issue with
15 changing the bargaining location?

16 A. Yes. Steve Buffalo.

17 Q. What did Mr. Buffalo say?

18 A. He had said that we should have neutral
19 locations going forward for bargaining sessions.

20 Q. Did the employer have a response to
21 that?

22 A. Yep. Pat Hill stated that this place
23 would be fine. We will only bargain here.

24 Q. Besides the discussion of bargaining
25 locations, do you recall any other discussions

1 at the outset of the May 22nd negotiations?

2 A. Yes. We were asking for the following
3 weeks to bargain and Pat Hill had stated that
4 they were too busy to -- Sunbelt to was too busy
5 to bargain until June 26, 2018.

6 Q. Did the union accept that date?

7 A. Yes.

8 Q. Why?

9 A. Because we figured if we didn't accept
10 that date it would only be further than that,
11 later than that.

12 Q. Did either party declare any caucuses
13 during those negotiations on May 22nd?

14 A. Yes.

15 Q. Who?

16 A. Sunbelt.

17 Q. Do you recall approximately how long
18 that caucus lasted?

19 A. Maybe an hour.

20 Q. Okay. And what happened after the
21 employer came back to the table from its caucus?

22 A. Pat Hill had stated that they needed
23 more time to go through our proposal so we ended
24 the session.

25 Q. And approximately how long were the

1 parties at the bargaining table at the time of
2 the negotiations ended?

3 A. Hour and a half.

4 Q. Were you in attendance at the parties'
5 negotiating session?

6 A. Yes.

7 Q. And when did that session take place?

8 A. June 26, 2018.

9 Q. How do you recall that session
10 beginning?

11 A. It started with a --

12 THE REPORTER: I'm sorry. Your Honor,
13 I didn't hear that.

14 JUDGE ROSAS: Can you repeat that? It
15 started with --

16 THE WITNESS: A safety moment.

17 THE REPORTER: Oh, thank you.

18 THE WITNESS: Yes, sir. You're
19 welcome.

20 BY MR. WIESE:

21 Q. Who requested to hold the safety
22 moment?

23 A. Pat Hill.

24 Q. What is a safety moment?

25 A. Sunbelt uses that time to discuss

1 safety concerns to be well aware of that to move
2 forward and be safe.

3 Q. And what did the safety moment at the
4 beginning of the negotiations on June 26th what
5 was that safety moment about?

6 A. Brian Anderson the profit center
7 manager had referenced being cautious while
8 driving with deer running rampant. Something
9 that you would typically not think too much of
10 in the summer. You'd think about that more or
11 less in the fall when the deer rut season was
12 going on.

13 Q. And did that safety moment have any
14 relevance to the negotiation of terms and
15 conditions of employment?

16 A. Nope.

17 Q. How often did you have safety moments
18 going forward at negotiations?

19 A. A handful, not every time. A handful
20 of times.

21 Q. Can you be any more specific?

22 A. Five times.

23 Q. How long did the safety moment on
24 June 26th take?

25 A. Five plus minutes.

1 Q. And what about going forward, how long
2 did the safety minutes typically take?

3 A. 5 to 10 minutes was pretty common.

4 Q. After the safety moment on June 26th,
5 what do you recall the parties discussing next?

6 A. Steve Buffalo again asked for neutral
7 locations and Pat Hill again stated that we were
8 not going to meet anywhere else.

9 Q. Was there any discussion about future
10 negotiating dates at that time?

11 A. Yes.

12 Q. And what do you recall from those
13 discussions?

14 A. We were asking for consistent weeks to
15 work with Pat Hill's travel from Florida, so...

16 Q. Who requested that specifically from
17 the union?

18 A. I did.

19 Q. Okay. And when you say consecutive
20 weeks, can you recall any more specifically what
21 you had requested?

22 A. The following week.

23 Q. And what response, if any, did the
24 employer negotiators have?

25 A. Pat Hill stated they were too busy to

1 meet.

2 Q. Okay. Did you make any other offers to
3 try to accommodate Ms. Hill's travel schedule?

4 MS. HILL: Objection. Form.

5 JUDGE ROSAS: What as to form? More
6 specific.

7 MS. HILL: He said it was that it was
8 Sunbelt was too busy. He is making the leap
9 that it was based on my schedule.

10 JUDGE ROSAS: Okay. Rephrase.

11 BY MR. WIESE:

12 Q. All right. Do you recall any other
13 discussions about the frequency of negotiations
14 at the outset of the June 26th negotiations?

15 A. Just that Sunbelt was too busy.

16 Q. Do you recall anything else?

17 A. I do not.

18 Q. Okay. Is there a document that would
19 help you refresh your recollection?

20 A. My affidavit.

21 MR. WIESE: Okay. And, your Honor,
22 would you like exhibits marked that are used for
23 refreshing recollection?

24 JUDGE ROSAS: Only if counsel requires
25 it.

1 BY MR. WIESE:

2 Q. Let the record reflect I am showing the
3 witness a copy of his affidavit. Mr. Ervin, I'd
4 specifically like to direct you to on Page 5
5 Paragraph 13 --

6 JUDGE ROSAS: Do you want to show
7 counsel what you are showing him?

8 THE WITNESS: You said 5 through 13?

9 BY MR. WIESE:

10 Q. Page 5, Paragraph 13.

11 A. Oh. Thank you, sir.

12 Q. Please peruse that document and let me
13 know when you are ready.

14 A. Okay.

15 Q. Mr. Ervin, is your recollection now
16 refreshed as to the other discussions around
17 scheduling?

18 A. Yes.

19 Q. Okay. And what do you recall?

20 A. The union had asked for negotiation
21 sessions on back-to-back days to help with Pat
22 Hill's schedule seeing that she is flying in
23 from Florida.

24 Q. Who offered this from the union?

25 A. I did.

1 Q. What, if any, response did the employer
2 have?

3 A. Pat Hill stated that Sunbelt was too
4 busy to meet that frequent.

5 Q. Did the parties eventually agree to
6 dates for future negotiations?

7 A. Yes.

8 Q. And what dates did they agree to?

9 A. July 30th and August 30th.

10 Q. Who proposed those dates?

11 A. Pat Hill.

12 Q. Why did the union agree to those dates?

13 A. Again, because if we didn't accept
14 those, we were concerned they would be pushed
15 back even farther.

16 Q. I'd like to direct your attention to
17 what's been marked as General Counsel
18 Exhibit 7B.

19 A. I am good.

20 Q. Okay. Mr. Ervin, do you recognize this
21 document?

22 A. Yes.

23 Q. Whose handwriting is on this document?

24 A. Mine.

25 Q. And what is this document?

1 A. It's more proposals for -- that Pat
2 Hill gave us on behalf of Sunbelt.

3 MS. HILL: And again, your Honor, just
4 double checking with Mr. Ryan, if you would
5 please look at 4 of 12, there is a reference
6 there of a communication with Mr. Ryan. I just
7 want to be sure that privilege has not been
8 waived inadvertently.

9 MR. RYAN: To the extent that there was
10 a privilege and we produced it, so we accept
11 that.

12 MS. HILL: Okay.

13 MR. WIESE: I'll offer General Counsel
14 Exhibit 7B.

15 MS. HILL: Okay. Voir dire?

16 VOIR DIRE EXAMINATION

17 BY MS. HILL:

18 Q. Okay. 12 of 12, sir.

19 A. Yes.

20 Q. What is this?

21 A. That's the safety sheet that you gave
22 us about in reference to your safety.

23 Q. Sunbelt's safety you are saying?

24 A. Yes Sunbelt's safety.

25 Q. Was Page 12 of 12 a proposal for the

1 collective bargaining agreement or
2 informational?

3 A. Just informational to my knowledge.

4 Q. And 11 of 12, what is the
5 multi-circular drawing of --

6 A. I was fiddling. Nothing.

7 Q. Okay. Nothing relating to
8 negotiations?

9 A. No. No.

10 MS. HILL: No objection, your Honor.

11 JUDGE ROSAS: Okay. And that is
12 General Counsel 7 constituting respondent's
13 proposal with the witness' handwriting at the
14 meeting contemporaneous with the meeting?

15 THE WITNESS: Yes, sir.

16 JUDGE ROSAS: It is received in
17 evidence.

18 MS. HILL: With the exception, as he
19 admitted, the last page was not a proposal. It
20 was informational.

21 JUDGE ROSAS: My understanding is it
22 was handed to him during the meeting so he just
23 put it all together.

24 MS. HILL: Okay. Your Honor, thank
25 you.

1 (GCX 7B received.)

2 THE WITNESS: Yes, sir.

3 DIRECT EXAMINATION (resumed)

4 BY MR. WIESE:

5 Q. Mr. Ervin, with respect to the
6 proposals in General Counsel Exhibit 7B, how did
7 the employer initially present those proposals?

8 A. Some of them were verbally.

9 Q. And how did the union respond to the
10 employer's verbal proposals?

11 A. Greg West stated that he liked all
12 proposals in writing.

13 Q. Did the employer address these
14 concerns?

15 A. Yes.

16 Q. How did they address them?

17 A. They took a caucus.

18 Q. And did you receive these written
19 proposals then after the caucus?

20 A. Yes.

21 Q. What time -- How long do you recall the
22 negotiations lasting?

23 A. Until around 1:30.

24 Q. P.m. or a.m.?

25 A. P.m. I'm sorry.

1 Q. Thank you. I'd like to direct your
2 attention now to General Counsel Exhibit 8. Do
3 you have the document, Mr. Ervin?

4 A. Yes.

5 Q. Okay. Do you recognize this document?

6 A. Yes.

7 Q. Okay. What is it?

8 A. It's correspondence from Pat Hill
9 stating that they could not attend the July 30th
10 meeting due to a funeral in the Sunbelt family.

11 Q. Did this document lead to negotiations
12 being rescheduled?

13 A. Yes.

14 Q. To what date?

15 A. August 8th.

16 Q. Of what year?

17 A. 2018.

18 MR. WIESE: I'll offer General Counsel
19 Exhibit 8.

20 MS. HILL: No objection.

21 JUDGE ROSAS: General Counsel's 8 is
22 received.

23 (GCX 8 received.)

24 BY MR. WIESE:

25 Q. Mr. Ervin, were you able to attend the

1 parties' bargaining on August 8th?

2 A. No.

3 Q. To your knowledge, did the parties
4 still meet for bargaining on that day?

5 A. Yes.

6 Q. After August 8th, when was the parties'
7 next bargaining session?

8 A. August 30th.

9 Q. Were you in attendance at that session?

10 A. Yes.

11 Q. How do you recall the negotiations
12 beginning that day?

13 A. The unit again proposed dates to meet
14 in early September.

15 Q. And what response -- Strike that.
16 Who from the union requested those
17 dates?

18 A. I believe I did.

19 Q. What response, if any, did the employer
20 have to that?

21 A. That they were too busy to meet that
22 soon.

23 Q. And did the parties agree to any future
24 dates?

25 A. Yes.

1 Q. And what dates did the parties agree
2 to?

3 A. September 27th and October 23rd.

4 Q. Who proposed those dates?

5 A. Pat Hill.

6 Q. I'd like to direct your attention now
7 to General Counsel Exhibit 7C.

8 A. Okay.

9 Q. Mr. Ervin, do you recognize this
10 document?

11 A. Yes.

12 Q. And what is it?

13 A. It's more proposals that Pat Hill gave
14 us with my handwriting on it.

15 Q. Were those proposals given during the
16 August 30, 2018 negotiations?

17 A. Yes.

18 MR. WIESE: I'll offer General Counsel
19 Exhibit 7C.

20 MS. HILL: No objection.

21 JUDGE ROSAS: General Counsel 7C is
22 received.

23 (GCX 7C received.)

24 BY MR. WIESE:

25 Q. Whose handwriting is on this document,

1 Mr. Ervin?

2 A. Mine.

3 Q. Okay. And the numbers in the upper
4 left-hand corner like the five underlined, eight
5 underlined, et cetera, what do those represent?

6 A. It represents the article number that
7 was based out of our original proposal.

8 Q. Mr. Ervin, did the employer have these
9 proposals in General Counsel's Exhibit 7C in
10 writing at the beginning of the negotiations on
11 August 30th?

12 A. I don't believe so.

13 Q. How did the employer initially present
14 these proposals?

15 A. Verbally.

16 Q. And did someone from the union raise
17 issues with how the employer was presenting
18 these proposals?

19 A. Yes. Greg West.

20 Q. What do you recall Mr. West saying on
21 this topic?

22 A. We need the proposals in writing.

23 Q. What response, if any, did the employer
24 have to that?

25 A. They took a caucus.

1 Q. Did anyone from the employer say why
2 they were taking that caucus?

3 A. I don't recall.

4 Q. Do you recall approximately how long
5 the employer's caucus lasted?

6 A. About an hour and a half.

7 Q. What happened when the parties returned
8 to the table?

9 A. That's when they -- Pat Hill gave us
10 that proposal.

11 Q. Okay. And when you say those
12 proposals, are you referring to the written
13 proposals in General Counsel Exhibit 7C?

14 A. Yes.

15 Q. And after the employer returned to the
16 table from its first caucus, how long did the
17 parties remain at the table?

18 A. About 15 minutes.

19 Q. And then what happened?

20 A. They took -- Sunbelt took another
21 caucus.

22 Q. And after Sunbelt took its second
23 caucus, how do you recall the negotiations
24 ending that day?

25 A. Approximately two hours later, Greg

1 West said it wasn't productive for us to wait so
2 we left.

3 Q. I'd like to direct your attention to
4 what's been marked as General Counsel
5 Exhibit 5E.

6 MR. WIESE: Could we go off the record,
7 your Honor?

8 JUDGE ROSAS: Off the record.

9 MR. WIESE: Thank you.

10 (Whereupon, a discussion was had
11 off the record.)

12 JUDGE ROSAS: Okay. Back on.

13 BY MR. WIESE:

14 Q. Mr. Ervin, do you recognize General
15 Counsel Exhibit 5E?

16 A. Yes.

17 Q. And what is it?

18 A. They are my notes from the Sunbelt
19 negotiations on September 27, 2018.

20 Q. Did you take these notes as bargaining
21 was occurring?

22 A. Yes. With the exception of what's in
23 the lower right-hand box that I wrote after the
24 meeting.

25 Q. What's your process for taking

1 bargaining notes?

2 A. Trying to write down times when things
3 have transpired and what I tried to do here is
4 write down all the articles that we were
5 discussing as we were talking that day.

6 Q. And with respect -- with the exception
7 of the box that you indicated on the first page
8 of the document, did you change these notes in
9 any way after negotiations on September 27th?

10 A. No.

11 MR. WIESE: I'll offer General Counsel
12 Exhibit 5E.

13 MS. HILL: Okay. I am going to -- I am
14 not sure if this should be a voir dire or this
15 should be done --

16 JUDGE ROSAS: Go ahead. Take a crack
17 at it.

18 VOIR DIRE EXAMINATION

19 BY MS. HILL:

20 Q. Page 1 of 3, lower left-hand corner, it
21 appears to say caucus 9/50?

22 A. Uh-huh.

23 Q. Verbal, please, for the court reporter,
24 sir.

25 A. Sunbelt.

1 Q. Yes or no?

2 A. Yeah. That was a caucus.

3 Q. Okay. What I am trying to say is
4 uh-huh and uh-uh do not work with the court
5 reporter. You have to make it -- use it in
6 words, okay?

7 A. Yes, ma'am. Yeah.

8 Q. All right. Whose caucus?

9 A. Sunbelt.

10 Q. Where does it say that?

11 A. It don't.

12 Q. How do you know?

13 A. Because I remember.

14 Q. Next page.

15 A. Uh-huh.

16 Q. At the top, caucus, what does that
17 reflect?

18 A. That's us, what we are discussing while
19 we are in our caucus.

20 MS. HILL: Okay. Now, I out of
21 abundance of caution again, Mr. Ryan, just in
22 case I don't want any inadvertent waiver of
23 privilege, I realize you produced these but
24 discussions with your partner --

25 MR. RYAN: Yeah. I mean, we're

1 certainly waiving any privilege that might be
2 attendant to this document but not to anything
3 that might be behind it.

4 MS. HILL: Okay.

5 BY MS. HILL:

6 Q. All right. Next entry reconvene. Is
7 that what your handwriting is?

8 A. Yes.

9 Q. All right. Who requested to reconvene?

10 A. You guys. Sunbelt came back.

11 JUDGE ROSAS: This is cross
12 examination. You know what --

13 MS. HILL: That's why I wasn't sure.

14 JUDGE ROSAS: I am not adverse to that
15 because it obviates the need for further
16 examination later on, so...

17 MS. HILL: Right. And that will be a
18 lot of it. No further questioning at least at
19 this time. I reserve my right to question him
20 further regarding this document.

21 JUDGE ROSAS: Okay. General Counsel's
22 5E is received.

23 (GCX 5E received.)

24 DIRECT EXAMINATION (resumed)

25 BY MR. WIESE:

1 Q. Mr. Ervin, going back to the first page
2 of this document, near the very top do you see
3 where it says Sunbelt negotiations there?

4 A. Yes.

5 Q. Okay. And then I see a list of names
6 there, a Jamie, Steve, et cetera. What do those
7 represent?

8 A. Those are all the parties in attendance
9 at that meeting.

10 Q. And then the time below that or the
11 numbers below that 8:40 underline, what does
12 that represent?

13 A. That's when we started. It was
14 supposed to start at 8:00 o'clock but Jason
15 Mayfield was running late so we didn't start
16 until 8:40 but he never showed up.

17 Q. Okay. And then going down below that
18 there is a series of number, 17.5, 17.6,
19 et cetera, on the first page.

20 A. Uh-huh.

21 Q. What do those numbers refer to?

22 A. Those are the article numbers that we
23 were discussing during that negotiation session.

24 Q. Okay. I'd like to direct your
25 attention now to General Counsel Exhibit 7D.

1 A. Okay.

2 Q. Mr. Ervin, do you recognize this
3 document?

4 A. Yes.

5 Q. Okay. And what is it?

6 A. It's the proposal that Pat Hill gave us
7 on September 27, 2018.

8 Q. Whose handwriting is on this document?

9 A. Mine.

10 Q. And the 15 that's underlined up top,
11 what does that represent?

12 A. That represents the original oral
13 number from our original proposal.

14 Q. Is that the same with regard to the 17
15 that's underlined about a third of the way down
16 that document?

17 A. Yes.

18 MR. WIESE: I'll offer General Counsel
19 Exhibit 7D.

20 MS. HILL: No objection.

21 JUDGE ROSAS: General Counsel 7D is
22 received.

23 (GCX 7D received.)

24 BY MR. WIESE:

25 Q. Mr. Ervin, I'd like you to set aside

1 your notes and I am going to have you testify
2 independent of your notes as to your
3 recollection as to what occurred that day. So
4 once -- what time were negotiations scheduled to
5 begin that day?

6 A. 8:00 o'clock.

7 Q. And what time did they actually begin?

8 A. 8:40.

9 Q. And why did negotiations begin late
10 that day?

11 A. Jason Mayfield was running late.

12 Q. How did you find that out?

13 A. Pat Hill informed us of that at 8:00
14 o'clock.

15 Q. Did Ms. Hill provide any explanation as
16 to why Mr. Mayfield was running late?

17 A. No.

18 Q. Did Mr. Mayfield show up for
19 negotiations at any point that day?

20 A. Nope.

21 Q. Once bargaining did start that day,
22 were the parties able to make progress in their
23 negotiations?

24 A. Yes.

25 Q. Did the parties take any caucuses that

1 day?

2 A. Yes.

3 Q. Who declared the caucus?

4 A. Sunbelt.

5 Q. How long did Sunbelt's caucus last?

6 A. A little over an hour.

7 Q. Did the parties return to the table
8 after the employer's caucus?

9 A. Yes.

10 Q. Approximately what time did bargaining
11 conclude that day?

12 A. Around 11:30.

13 Q. How did the bargaining at the
14 September 27th session compare to the bargaining
15 that had occurred leading up to that point?

16 MS. HILL: Objection. Form. Opinion
17 rather than facts.

18 JUDGE ROSAS: No, I'll sustain that.
19 Let's keep it a little more specific.

20 BY MR. WIESE:

21 Q. What was different about the bargaining
22 on September 27th as opposed to the bargaining
23 that occurred on May 22nd, June 26th and
24 August -- and the parties' August session that
25 you attended?

1 A. It was fairly productive.

2 Q. Did you attend the parties' next
3 session after the September 27th session?

4 A. Yes.

5 Q. And when was that session?

6 A. October 23, 2018.

7 Q. Did those negotiations on October 23rd
8 start on time?

9 A. No.

10 Q. And why not?

11 A. Jason -- Pat Hill informed us Jason
12 Mayfield was running behind again.

13 Q. And what time did the negotiations
14 start or how -- Strike that.

15 How late were the negotiations in
16 starting that day?

17 A. About 20 minutes.

18 Q. Was Mr. Mayfield present when
19 negotiations began that day?

20 A. I believe so.

21 Q. What did the parties discuss at the
22 beginning of those negotiations?

23 A. More negotiating dates.

24 Q. And what do you recall from those
25 discussion about dates?

1 A. I recall we were trying to get more
2 frequent dates than once a month but Pat Hill
3 stated that Sunbelt was too busy to meet more
4 than once a month.

5 Q. Okay. I am going to show you what's
6 been marked as General Counsel Exhibit 6D. Do
7 you have that document?

8 A. Yes.

9 Q. Okay. Thank you. Do you recognize
10 this document?

11 A. Yes.

12 Q. Okay. And what is it?

13 A. It's a comprehensive proposal that we
14 gave -- I gave to Sunbelt on October 23, 2018
15 with respect to where we felt things were so
16 far.

17 Q. And with respect to the red line
18 markings on this document, what do those
19 represent?

20 A. I believe that was the changes that
21 were made to this document from Sunbelt.

22 Q. Okay. And what was the purpose --
23 Well, strike that.

24 MR. WIESE: I'll offer General Counsel
25 Exhibit 6D.

1 MS. HILL: Okay. A little bit of voir
2 dire.

3 VOIR DIRE EXAMINATION

4 BY MS. HILL:

5 Q. When this was prepared?

6 A. I gave it to you guys on October 23,
7 2018.

8 MS. HILL: Thank you. Sorry. Excuse
9 me.

10 BY MS. HILL:

11 Q. Was it in this format with draft on it
12 or was it without draft?

13 A. I don't recall.

14 MS. HILL: Because -- All right. This
15 one we'll object to.

16 JUDGE ROSAS: Because he doesn't recall
17 whether the draft stamp was on at the time?

18 MS. HILL: Whether this was the
19 document that had been given to Sunbelt on
20 October 23rd of 2018, yes, sir.

21 JUDGE ROSAS: Do you have any further
22 questions?

23 MR. WIESE: Well, my response would be
24 that he authenticated it as the document that
25 was provided that day.

1 JUDGE ROSAS: Do you recall submitting
2 to the respondent this proposal but you don't
3 recall whether the stamp draft was on it at the
4 time?

5 THE WITNESS: Yes, sir.

6 JUDGE ROSAS: Okay. Counsel, your
7 objection is noted. I am going to overrule it.
8 It's a matter that you can pursue with respect
9 to the weight, if any, that I will or will not
10 give the document. General Counsel 6D is
11 received.

12 (GCX 6D received.)

13 DIRECT EXAMINATION (resumed)

14 BY MR. WIESE:

15 Q. Mr. Ervin, why did the union create
16 General Counsel Exhibit 6D? What was the
17 purpose of that document?

18 A. We were just hoping to make sure both
19 parties were on the same page so that it would
20 make our negotiation sections going forward more
21 efficient.

22 Q. And who presented this document to the
23 employer from the union?

24 A. I did.

25 Q. And what response, if any, do you

1 recall the employer having when you presented

2 General Counsel Exhibit 6D?

3 A. I believe they took a caucus.

4 Q. And during that caucus, did anyone from

5 the union go to see what the employer was up to?

6 A. Yes.

7 Q. Who?

8 A. I did.

9 Q. And why did you go to check on the
10 employer during that caucus?

11 A. It was probably 30, 40 minutes in and I
12 wanted to make sure that Sunbelt knew that we
13 were ready for them, not that they would be
14 waiting for us.

15 Q. Did you go to visit Sunbelt in their
16 caucus room?

17 A. Yes.

18 Q. And who did you speak to from the
19 employer?

20 A. Pat Hill.

21 Q. And what response did Ms. Hill have?

22 A. That they weren't ready.

23 Q. And after you visited the employer's
24 caucus room, what did you do?

25 A. I went back to our caucus room.

1 Q. And when you were in your caucus room,
2 prior to the parties returning back to the table
3 for bargaining, did you see any employer
4 representatives?

5 A. Yes.

6 Q. Who did you see?

7 A. I believe it was Bo Bogardus on his
8 phone.

9 Q. How could you see Mr. Bogardus?

10 A. The window of negotiation/our caucus
11 room had a window in it. I could see through
12 it.

13 Q. And how long did you see Mr. Bogardus
14 on his phone?

15 A. A matter of minutes.

16 Q. Did you see any other employer
17 representatives during that caucus?

18 A. No.

19 Q. Did you see Mr. Bogardus on his phone
20 before or after you had visited the employer to
21 tell them you were ready to begin negotiations?

22 A. After.

23 Q. Did the employer eventually return to
24 the bargaining table?

25 A. Yes.

1 Q. All right. How much longer after you
2 had requested or after you had told them that
3 the union was ready to resume negotiations?

4 A. About a half hour.

5 Q. I'd like to direct your attention to
6 General Counsel Exhibit 6C.

7 A. Okay.

8 Q. Mr. Ervin, do you recognize this
9 document?

10 A. Yes.

11 Q. What is it?

12 A. They are the proposals that we gave
13 Sunbelt that day on October 23, 2018.

14 Q. Did you present these proposals after
15 the employer's caucus?

16 A. Yes.

17 MR. WIESE: Okay. I'll offer General
18 Counsel Exhibit 6C.

19 MS. HILL: Another voir dire on this
20 one.

21 VOIR DIRE EXAMINATION

22 BY MS. HILL:

23 Q. At what time did you give Sunbelt this
24 proposal?

25 A. I don't recall the exact time of that

1 day.

2 Q. Was it at the beginning of the
3 negotiation session, after a caucus?

4 A. I'm sorry. I don't recall what time it
5 was.

6 MS. HILL: We have an objection to this
7 document, again, whether it was actually
8 presented to Sunbelt on the 23rd of October,
9 2018, sir.

10 JUDGE ROSAS: Do you recall presenting
11 it to Sunbelt on October 23rd?

12 THE WITNESS: Yes. That's why I wrote
13 it on here.

14 JUDGE ROSAS: Okay. I am going to
15 receive it subject to that objection and any
16 weight that I may or may not give the document.
17 General Counsel 6C is received.

18 (GCX 6C received.)

19 DIRECT EXAMINATION (resumed)

20 BY MR. WIESE:

21 Q. Mr. Ervin, I'd like to now direct your
22 attention to General Counsel Exhibit 7E.

23 A. Okay.

24 Q. Do you recognize this document?

25 A. Yes.

1 Q. What is it?

2 A. Sunbelt's proposals to us on
3 October 23, 2018.

4 Q. And whose handwriting is on this
5 document?

6 A. It's mine.

7 MR. WIESE: I'll offer General Counsel
8 Exhibit 7E.

9 MS. HILL: No objection, your Honor.

10 JUDGE ROSAS: General Counsel 7E is
11 received.

12 (GCX 7E received.)

13 BY MR. WIESE:

14 Q. Mr. Ervin, looking at the top of the
15 first page of this document, I see some numbers
16 17 equal 13, 18 equal 14, et cetera. What do
17 those numbers represent?

18 A. They represent the original articles
19 from ours, their 17 equals our 13 from original
20 proposal 18 is 14, 22 is 17.

21 Q. Okay. All right. So after -- and the
22 employer presented this proposal to the union
23 during the bargaining on October 23rd?

24 A. Yes.

25 Q. And after the parties exchanged their

1 proposals that day, what happened next?

2 A. I don't recall.

3 Q. Do you recall that either party
4 declared a caucus at that point?

5 MS. HILL: Objection. Leading.

6 JUDGE ROSAS: Sustained.

7 BY MR. WIESE:

8 Q. What, if anything, do you recall
9 happening after the parties exchanged their
10 proposals?

11 A. I believe Sunbelt took a caucus.

12 Q. Do you recall how long that caucus
13 lasted?

14 A. A little over an hour.

15 Q. Did the parties return to the table
16 after that caucus?

17 A. Yes.

18 Q. And what do you recall being discussed
19 after that caucus that day?

20 JUDGE ROSAS: Are you relying on a
21 document, sir? You are looking at the document.

22 THE WITNESS: No. I don't recall.

23 JUDGE ROSAS: Don't look at the
24 document then.

25 THE WITNESS: Okay. I don't recall.

1 BY MR. WIESE:

2 Q. Do you recall is there a document that
3 would help to refresh your recollection?

4 A. My affidavit.

5 Q. I am going to direct the witness to
6 Page 8 of his affidavit on lines 1 through 16.

7 A. 1 through 16?

8 Q. Yes.

9 A. Thank you. Okay.

10 Q. Okay. Is your recollection now
11 refreshed as to the discussions after the
12 employer's caucus?

13 A. Yes.

14 Q. Okay. And what do you recall happening
15 at that time?

16 A. That the blanket discussions frustrated
17 the union.

18 Q. And the union brought this up at the
19 table?

20 A. Yes.

21 Q. And what response, if any, did the
22 employer have?

23 MR. WIESE: Excuse me. I forgot to
24 retrieve the affidavit. And, Ms. Hill, were you
25 taking pictures of the affidavit on your camera?

1 MS. HILL: Of those lines, yes.

2 JUDGE ROSAS: Don't do that.

3 MR. WIESE: You Honor, can you confirm
4 on the record that you have deleted those
5 pictures?

6 MS. HILL: Of course, sir.

7 BY MR. WIESE:

8 Q. So going back to that question, could
9 you --

10 MS. HILL: By the way, I can use that
11 affidavit?

12 JUDGE ROSAS: Absolutely.

13 MS. HILL: Thank you very much, sir.

14 THE WITNESS: I'm sorry. Repeat the
15 question.

16 BY MR. WIESE:

17 Q. With --

18 MR. WIESE: I'm sorry. Can you repeat
19 what the last question was?

20 (Whereupon, the record was read
21 as requested.)

22 THE WITNESS: I believe they took a
23 caucus.

24 BY MR. WIESE:

25 Q. And did the parties come back to the

1 party then after that caucus?

2 A. Yes.

3 Q. And do you recall did the union take
4 any caucuses that day?

5 A. Yes.

6 Q. How long was the union's caucus?

7 A. 15 minutes.

8 Q. What was the purpose of the union's
9 caucus during the parties bargaining that day?

10 A. To try to TA some things and go over
11 some things to show some movement.

12 Q. Did the parties come back to the table
13 after the union's caucus?

14 A. Yes.

15 Q. And do you recall approximately what
16 time the bargaining concluded that day?

17 A. I don't recall.

18 Q. Okay. Do you recall how long the
19 parties were at the bargaining table that day?

20 A. Four hours.

21 Q. So stepping away from that specific
22 bargaining session for a moment, Mr. Ervin, over
23 the course of the parties' bargaining, how would
24 you compare the union's caucuses to the
25 employer's caucuses up to this point?

1 MS. HILL: Objection.

2 JUDGE ROSAS: Sustained.

3 MS. HILL: Form. Thank you.

4 BY MR. WIESE:

5 Q. What impact, if any, was the length of
6 the employer's caucuses having on the parties'
7 negotiations?

8 A. It frustrated the union.

9 Q. Besides frustrating the union, did it
10 have any other impact on negotiations?

11 A. It slowed things down.

12 Q. I'd like to direct the witness'
13 attention to what's previously been marked as
14 General Counsel Exhibit 9.

15 A. Okay.

16 Q. Do you recognize this document,
17 Mr. Ervin?

18 A. Yes.

19 Q. And what is it?

20 A. It's correspondence between Pat Hill
21 and myself in reference to the cancellation of
22 the November 13th session 2018.

23 Q. And did this document lead to
24 negotiations being cancelled in November?

25 A. Yes.

1 Q. Did the parties hold a make-up session
2 in December to make up for the cancelled
3 November session?

4 A. We met on December 12, 2018.

5 Q. Did you meet again in December?

6 MS. HILL: Leading.

7 JUDGE ROSAS: I will allow that.

8 THE WITNESS: I misspoke. December 10,
9 2018 we met.

10 BY MR. WIESE:

11 Q. Okay. Okay. Did you have a second
12 meeting in December?

13 A. No.

14 Q. Why not?

15 A. They were too busy.

16 MR. WIESE: I'll offer General Counsel
17 Exhibit 9.

18 MS. HILL: No objection, your Honor.

19 JUDGE ROSAS: General Counsel 9 is
20 received.

21 (GCX 9 received.)

22 BY MR. WIESE:

23 Q. Mr. Ervin, were you in attendance at
24 the parties' next bargaining session?

25 A. Yes.

1 Q. And how did that bargaining session
2 begin?

3 A. The union proposed our health
4 insurance, our pension and our dues checkoff.

5 Q. And before the discussion of those
6 items, do you recall any other discussions
7 occurring?

8 MS. HILL: Objection. Leading.

9 JUDGE ROSAS: I'll allow that if you
10 recall.

11 THE WITNESS: If I recall, us talking
12 about more bargaining sessions.

13 BY MR. WIESE:

14 Q. Now, what dates did the union propose
15 for future negotiations?

16 A. Early January.

17 Q. Okay. And what response, if any, did
18 the company have to those dates?

19 A. That they were too busy to meet until
20 January 28th.

21 Q. And who proposed the early January
22 dates for the union?

23 A. I believe it was myself.

24 Q. And who responded from the employer?

25 A. Pat Hill.

1 Q. Did the union end up agreeing to that
2 late January date?

3 A. Yes.

4 Q. Why?

5 A. We were concerned that we wouldn't get
6 anything -- whatever we agreed -- if we didn't
7 agree to that it would have been later, sorry.

8 Q. I'd like to direct your attention to
9 General Counsel Exhibit 6E.

10 A. Okay.

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. And what is it?

14 A. It's a dues check off/administration
15 dues language that we proposed to Sunbelt on
16 December 10, 2018.

17 Q. Do you recall who presented this to the
18 employer from the union?

19 A. Yes, it was me.

20 MR. WIESE: I'll offer General Counsel
21 Exhibit 6E.

22 MS. HILL: No objection.

23 JUDGE ROSAS: General Counsel 6E is
24 received.

25 (GCX 6E received.)

1 BY MR. WIESE:

2 Q. What, if any, response did the employer
3 have when you presented General Counsel
4 Exhibit 6E at the table?

5 A. They declined all three insurance,
6 pension and admin dues.

7 Q. And with respect to the administrative
8 dues proposal, what, if any, justification did
9 the employer provide for rejecting that
10 proposal?

11 A. None.

12 Q. I'd like to direct your attention to
13 General Counsel Exhibit 7F.

14 A. Okay.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. And what is it?

18 A. Sunbelt's proposal that they gave to us
19 on December 10, 2018.

20 Q. Whose handwriting is on this document?

21 A. Mine.

22 MR. WIESE: I'll offer General Counsel
23 Exhibit 7F.

24 MS. HILL: No objection.

25 JUDGE ROSAS: General Counsel 7F is

1 received.

2 (GCX 7F received.)

3 BY MR. WIESE:

4 Q. So with respect to General Counsel
5 Exhibit 7F, who from the employer presented this
6 proposal to the union?

7 A. Pat Hill.

8 Q. And when the employer presented this
9 proposal to the union, what response did the
10 union have?

11 A. I don't recall.

12 Q. Did the union raise any issues about
13 the form of the proposal in General Counsel
14 Exhibit 7F?

15 MS. HILL: Objection.

16 JUDGE ROSAS: Sustained.

17 BY MR. WIESE:

18 Q. Is there a document that would help to
19 refresh your recollection as to the discussions
20 around this proposal?

21 A. My affidavit.

22 Q. Mr. Ervin, I am going to show you a
23 copy of your first affidavit in this case and
24 direct you to Page 9 on Paragraph 26.

25 MS. HILL: All of 26?

1 MR. WIESE: Yes.

2 THE WITNESS: Okay.

3 BY MR. WIESE:

4 Q. Is your recollection now refreshed as
5 to the discussions regarding Employer Exhibit --
6 or excuse me -- General Counsel Exhibit 7F, the
7 employer's proposal?

8 A. Yes.

9 Q. Okay. And so what do you recall from
10 those discussions?

11 A. The unit had asked for counterproposals
12 to what we already proposed.

13 Q. Is there anything else you recall from
14 those discussions?

15 A. We asked Sunbelt for the comprehensive
16 proposal so we could see where we were so we
17 were hoping to further things along to be on the
18 same page with them.

19 Q. Did the employer present a
20 comprehensive proposal at this session?

21 A. No.

22 Q. All right. Did either party declare a
23 caucus during those December negotiations?

24 A. Yes.

25 Q. Who?

1 A. Sunbelt.

2 Q. Do you recall approximately when the
3 employer declared its caucus?

4 A. After this discussion on all the
5 counters.

6 Q. Did the employer return to the
7 bargaining table that day?

8 A. No.

9 Q. How long did the union representatives
10 wait for the employer to return to the table?

11 A. Close to two hours.

12 Q. After waiting for that period of time,
13 what did the union do?

14 A. We decided after -- Greg West decided
15 after two hours it wasn't productive to sit
16 there so we left.

17 Q. Did anyone from the union go to talk to
18 the employer before leaving?

19 A. Yes.

20 Q. Who?

21 A. Me.

22 Q. And what do you recall from your
23 discussions with the employer at that time?

24 A. I just let them know that we were going
25 to be leaving for the day.

1 Q. And what response did the employer have
2 to that?

3 A. That they were still in their caucus.

4 Q. Okay. Mr. Ervin, I'd like to direct
5 your attention to General Counsel Exhibit 7G.

6 A. Okay.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. Okay. What is it?

10 A. It's the comprehensive proposal that
11 Pat Hill sent me on January 16, 2019.

12 Q. And so is the proposal following Page 1
13 of this document was this attached to Ms. Hill's
14 E-mail?

15 A. Yes.

16 MR. WIESE: Okay. I'll offer General
17 Counsel Exhibit 7G.

18 MS. HILL: No objection.

19 JUDGE ROSAS: General Counsel 7G is
20 received.

21 (GCX 7G received.)

22 JUDGE ROSAS: Counsel, how much longer
23 do you have on direct?

24 MR. WIESE: Probably less than halfway
25 through to be honest.

1 JUDGE ROSAS: Okay. Why don't we take
2 a five-minute recess?

3 (Whereupon, a short recess was
4 taken.)

5 JUDGE ROSAS: Back on the record.

6 MR. WIESE: Could, you repeat where I
7 was at?

8 (Whereupon, the record was read
9 as requested.)

10 BY MR. WIESE:

11 Q. Mr. Ervin, why were you requesting a
12 comprehensive proposal from the employer?

13 A. So we could better prepare for the next
14 session and again try to move things along.

15 Q. After you received General Counsel
16 Exhibit 7G, did you review that document?

17 A. Yes.

18 Q. When did you review the document?

19 A. Probably the next day Dan Marsolek and
20 myself started going through it.

21 Q. As you and Mr. Marsolek went through
22 the document, did you have any concerns about
23 the employer's proposal?

24 A. Yes.

25 Q. What concerns?

1 A. The article numbers didn't match up
2 with our originals.

3 Q. When you say originals, what are you
4 talking about?

5 A. Our original proposal that was given on
6 May 22, 2018.

7 Q. Mr. Ervin, I'd like to direct your
8 attention to General Counsel Exhibit 10.

9 A. Okay.

10 Q. Do you recognize this document?

11 A. Yes.

12 Q. What is it?

13 A. Correspondence between myself and Pat
14 Hill and it was from Pat Hill stating that they
15 had to cancel the January 28, 2019 session
16 because regional manager Bo Bogardus had a
17 custody battle with his grandson.

18 Q. Did this notice lead to those
19 negotiations being cancelled?

20 A. Yes.

21 MR. WIESE: I'll offer General Counsel
22 Exhibit 10.

23 MS. HILL: No objection.

24 JUDGE ROSAS: General Counsel 10 is
25 received.

1 (GCX 10 received.)

2 BY MR. WIESE:

3 Q. Mr. Ervin, did the parties hold
4 negotiations in February?

5 A. Yes.

6 Q. And were you in attendance at the
7 parties next negotiation?

8 A. Yes.

9 Q. Do you recall when those negotiations
10 were?

11 A. February 8, 2019.

12 Q. What time were those negotiations
13 scheduled to begin that day?

14 A. 8:00 o'clock.

15 Q. And did those negotiations begin on
16 time?

17 A. Nope.

18 Q. What time did the negotiations begin?

19 A. 9:30.

20 Q. Why did the negotiations begin late?

21 A. Pat Hill had stated that Jason Mayfield
22 was running behind.

23 Q. While you waited for the employer that
24 day, what did the union do?

25 A. We waited in the caucus room and that

1 particular delay was below zero or single digits
2 outside and the caucus room was also very cold.

3 Q. Was it just the union in the caucus
4 room during that time?

5 A. Yes.

6 Q. Okay. And when the employer
7 representatives arrived, what, if any, issues
8 did the union raise about the temperature?

9 A. Greg West stated it was very cold in
10 here. He asked if we could rent a heater.

11 Q. And how did the employer respond?

12 A. That they were unaware that it was so
13 cold in that room.

14 Q. Did they do anything to address the
15 temperature in the room?

16 A. Yeah. They got a portable heater.

17 Q. Was that heater in the room the entire
18 time during the bargaining?

19 A. Yes.

20 Q. Okay. Once the employer
21 representatives arrived, how did the meeting
22 begin?

23 A. With a safety moment.

24 Q. After the safety moment, what do you
25 recall the parties discussing next?

1 A. We provided our proposal on wages.

2 Q. I am going to show you what's been
3 marked as General Counsel Exhibit 6F. Do you
4 recognize this document?

5 A. Yes.

6 Q. And what is it?

7 A. It's the proposal that I gave to
8 Sunbelt at the start of that meeting on
9 February 8, 2019 for our wages.

10 Q. Was this the union's first wage
11 proposal?

12 A. Yes.

13 Q. What, if any, response do you recall
14 the employer having when you presented this wage
15 proposal to them?

16 A. That they weren't going to get into any
17 economic discussions.

18 Q. Who stated this for the employer?

19 A. Pat Hill.

20 MR. WIESE: I'll offer General Counsel
21 Exhibit 6F.

22 MS. HILL: No objection.

23 JUDGE ROSAS: General Counsel 6F is
24 received in evidence.

25 (GCX 6F received.)

1 BY MR. WIESE:

2 Q. After the employer came to the table
3 that day, did the parties discuss any other
4 economic items?

5 A. Yes.

6 Q. Okay. And what did they discuss?

7 A. We reproposed our health, our pension
8 and our dues checkoff.

9 Q. What response did the employer have to
10 these proposals?

11 A. They declined with no counteroffer.

12 Q. And then after the employer declined
13 these proposals, what do you recall happening
14 next?

15 A. I believe Sunbelt took a caucus.

16 Q. Do you recall how long the parties were
17 at the table before Sunbelt took a caucus?

18 A. 10, 15 minutes.

19 Q. How long did this caucus last?

20 A. Hour and a half plus.

21 Q. And during this caucus, did anyone from
22 the union go to check on the employer?

23 A. Yes.

24 Q. Who?

25 A. Me.

1 Q. Why did you go to check on the
2 employer?

3 A. I, again, wanted to make sure that they
4 knew that we were ready when they were ready.

5 Q. And when you went to go check on the
6 employer during that caucus, what were their
7 representatives doing?

8 A. I happened to see some representatives
9 socializing with some vendors.

10 Q. Do you recall who from the Sunbelt
11 negotiating team you saw?

12 A. Jason Mayfield for sure.

13 Q. How could you tell that Mr. Mayfield
14 was speaking to a vendor?

15 A. Just based on how they were dressed and
16 the fact that it wasn't any of the bargaining
17 unit negotiating -- or excuse me -- the
18 negotiating team from Sunbelt.

19 Q. How long did you see Mr. Mayfield
20 socializing with the vendor?

21 A. A few minutes.

22 Q. Okay. Did the employer return to the
23 table after that caucus?

24 A. Yes.

25 Q. What did the parties discuss when the

1 employer returned?

2 A. Sunbelt again turned down or declined
3 the proposals that we had given them.

4 Q. Okay. Do you recall any other
5 discussions immediately after that caucus?

6 A. I don't recall.

7 Q. Okay. Is there a document that would
8 help to refresh your recollection?

9 A. My affidavit.

10 Q. Okay. I am going to direct your
11 attention to Page 10 of your affidavit
12 Paragraph 32.

13 A. Okay.

14 Q. Mr. Ervin, is your recollection
15 refreshed as to the parties other discussions
16 after that caucus?

17 A. Yes.

18 Q. Okay. And what else did the parties
19 discuss at that time?

20 A. More future bargaining session dates.

21 Q. What dates did the union propose?

22 A. We were hoping for subsequent weeks to
23 originally proposed dates that we already had.

24 Q. And what dates did the employer counter
25 propose with?

1 A. The February 21st and that was already
2 scheduled on March -- and March 21st.

3 Q. The after discussing dates, what do you
4 recall the parties discussing next?

5 A. I recall Greg West stating that his
6 frustration in reference to the lack of
7 counterproposals.

8 Q. And what response did the employer have
9 to that?

10 A. They took a caucus.

11 Q. And after the caucus, was there any
12 discussion about General Counsel Exhibit 7G, the
13 comprehensive proposal that had been E-mailed to
14 the union?

15 A. Yes.

16 Q. Okay. And what do you recall from the
17 discussions around that topic?

18 A. We had told them -- we had told Sunbelt
19 going forward we'll work off of their numbers on
20 their proposals so that way there is no
21 confusion.

22 Q. Who said this for the union?

23 A. I did.

24 Q. Did you explain why you were going to
25 work off of their numbers?

1 A. Yes.

2 Q. And what did you tell them?

3 A. That way there is no confusion and we
4 can move forward efficiently.

5 Q. And how did the employer respond to
6 that?

7 A. Pat Hill stated that that's what they
8 would do then.

9 Q. And after the parties reached that
10 agreement, what do you recall happening next?

11 A. I believe Sunbelt took another caucus.

12 Q. And during that caucus, did you see any
13 representatives of the employer?

14 A. Yes.

15 Q. Who did you see?

16 A. I saw Bo Bogardus, Robert, on his
17 computer at the counter.

18 Q. Where were you when you saw Mr. Robert
19 Bogardus?

20 A. In our caucus room.

21 Q. How long did you see Mr. Bogardus at
22 his computer?

23 A. 5, 10 minutes.

24 Q. Did it appear to you that he was doing
25 work related to bargaining during that time?

1 MS. HILL: Objection.

2 JUDGE ROSAS: Sustained.

3 BY MR. WIESE:

4 Q. Were there -- While Mr. Bogardus was at
5 his computer were there other Sunbelt employees
6 around?

7 A. Yes.

8 Q. Were those other Sunbelt employees
9 members of the employer's negotiating team?

10 A. No.

11 Q. How long did the employer's caucus
12 last?

13 A. Over an hour.

14 Q. Did the employer come back to the table
15 after that caucus?

16 A. Yes.

17 Q. Did the employer come back with any new
18 proposals after that caucus?

19 A. I don't believe so.

20 Q. And after that caucus, what, if any,
21 discussions do you recall around economic items?

22 A. Greg West had stated that he would like
23 to see a counterproposal to our economics.

24 Q. And what response did the employer have
25 to that?

1 A. Pat Hill declined because she said we
2 were not at that stage in the negotiations yet
3 even though everything was on the table.

4 Q. Did someone from the union state that
5 everything was on the table?

6 A. Yes.

7 Q. Who stated that?

8 A. I did.

9 Q. And after you stated that, what do you
10 recall happening next?

11 A. Dan Marsolek got a little frustrated
12 because of the fact that they weren't counter
13 proposing anything, they were just declining
14 everything and because of that Greg West had
15 figured that we should just end the session for
16 the day due to the frustration on the union's
17 part or on the union because of the lack of
18 counterproposals.

19 Q. Was it agreed by the parties to end
20 negotiations at that time?

21 A. I believe so.

22 Q. Okay. Why was the union so frustrated
23 at that point in negotiation?

24 A. We believed that we were doing our
25 homework in between sessions to try to prepare

1 for the sessions and make it more efficient and
2 we didn't feel that Sunbelt was doing the same.

3 Q. I am going to direct your attention to
4 General Counsel Exhibit 11. Do you recognize
5 this document?

6 A. Yes.

7 Q. Okay. What is it?

8 A. It's the E-mail from Pat Hill stating
9 that she couldn't get the comprehensive proposal
10 done.

11 MS. HILL: Objection. Misstatement.

12 JUDGE ROSAS: It's an E-mail exchange
13 between you and Ms. Hill. Next question.

14 BY MR. WIESE:

15 Q. Did the union get an updated collective
16 bargaining agreement from the employer prior to
17 the next negotiations?

18 A. No.

19 MR. WIESE: I'll offer General Counsel
20 Exhibit 11.

21 MS. HILL: No objection.

22 JUDGE ROSAS: General Counsel 11 is
23 received.

24 (GCX 11 received.)
25

1 BY MR. WIESE:

2 Q. Mr. Ervin, why were you requesting an
3 updated collective bargaining agreement at this
4 time?

5 A. To prepare for the next session.

6 Q. Any other reasons?

7 A. To make the next session more efficient
8 and productive.

9 Q. Were you in attendance at the parties
10 next bargaining session?

11 A. Yes.

12 Q. And when did that session take place?

13 A. February 21, 2019.

14 Q. Did the union have any additional
15 representatives with it at the bargaining table
16 that day?

17 A. Yes.

18 Q. Who?

19 A. Our president and business manager
20 Terrence T. McGowan.

21 Q. Does Mr. McGowan particularly
22 participate in collective bargaining
23 negotiations?

24 A. Not at this level, no, not typically.

25 Q. When you say "not at this level," what

1 do you mean?

2 A. For shop-based agreements. He only
3 works and negotiates with the master agreements
4 with our associations.

5 Q. Why was Mr. McGowan at the session that
6 day?

7 A. Because he wanted to see what was going
8 on for himself.

9 Q. How do you recall the negotiations
10 beginning that day?

11 A. With a safety moment.

12 Q. I am going to show you what's been
13 marked as General Counsel Exhibit 7H. Do you
14 have that document?

15 A. Yes.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. Okay. And what is it?

19 A. It's the proposals that Sunbelt gave us
20 on February 21, 2019.

21 Q. And the handwriting on this document,
22 whose handwriting is that?

23 A. Mine.

24 MR. WIESE: I will offer General
25 Counsel Exhibit 7H.

1 MS. HILL: No objection.

2 JUDGE ROSAS: General Counsel 7H is
3 received.

4 (GCX 7H received.)

5 BY MR. WIESE:

6 Q. After the employer presented this
7 proposal at negotiations, and I'm talking about
8 specifically on Page 1 of this document, what
9 discussions do you recall having around that
10 item?

11 A. Terry McGowan had mentioned that they
12 do have the dues checkoff, Sunbelt does, and
13 other locals where they are assigned to and why
14 we couldn't have it here.

15 Q. What response, if any, did the employer
16 have to Mr. McGowan's remarks?

17 A. They just weren't going to do it. They
18 declined.

19 Q. Did the employer provide any reason as
20 to why they were declining dues checkoff?

21 A. No.

22 Q. And after the discussions around dues
23 checkoff, what happened next?

24 A. I believe Sunbelt took a caucus.

25 Q. Are you certain that it was Sunbelt?

1 A. No.

2 Q. Is there a document that would help to
3 refresh your recollection as to who took that
4 caucus?

5 A. My affidavit.

6 Q. Okay. I am going to direct your
7 attention to Page 12, Lines 19 through 23.

8 MS. HILL: 12, lines 19 through 23?

9 MR. WIESE: That's correct.

10 THE WITNESS: Thank you. Okay.

11 BY MR. WIESE:

12 Q. Is your recollection now refreshed as
13 to who declared that caucus at that time?

14 A. Yes.

15 Q. Who did?

16 A. We did.

17 Q. Why did the union declare a caucus at
18 that time?

19 A. We wanted to go over some of their
20 proposals to accept.

21 Q. How long did the union's caucus last?

22 A. About 15 minutes.

23 Q. After the parties returned to the
24 table, were there any discussions about the
25 remainder of the proposals in General Counsel

1 Exhibit 7H on Pages 2 and 3?

2 A. Yes.

3 Q. Okay. What do you recall from those
4 discussions?

5 A. That we, again, stated that we want to
6 go through the article numbers that she proposed
7 that way there is no confusion instead of our
8 originals.

9 Q. Was there -- why were you bringing up
10 confusion about proposals?

11 MS. HILL: Objection.

12 JUDGE ROSAS: Sustained. Rephrase.

13 BY MR. WIESE:

14 Q. What had occurred at the table that
15 caused you to bring up the confusion around the
16 proposals?

17 A. Pat Hill had asked which articles
18 numbers we were working off of.

19 Q. And what response did you have to that?

20 A. I said that we would work off their
21 article numbers going forward to minimize
22 confusion.

23 Q. And what did the employer do in
24 response?

25 A. I believe then they took a caucus.

1 Q. Did you see anyone from the employer
2 during that caucus?

3 A. Yes.

4 Q. Who did you see?

5 A. I saw someone out of the caucus room.
6 I don't recall who it was.

7 Q. Okay. Did anyone from the employer
8 come to visit your caucus room during that
9 caucus?

10 A. Yes.

11 Q. Who?

12 A. It was Pat Hill.

13 Q. Why did -- What was Ms. Hill doing in
14 your caucus room?

15 A. She came back and asked again which
16 article numbers we were supposed to work off of.

17 Q. Did Pat -- how many times did Pat Hill
18 visit your caucus room during that caucus?

19 A. Twice.

20 Q. Did any other members of the employer's
21 negotiating team join Ms. Hill when she came to
22 your caucus room?

23 A. No.

24 Q. How long did the employer's caucus last
25 that day?

1 A. It went about two hours and then Greg
2 West at 11:40 figured we should break for lunch.
3 We came back from lunch at 12:40. Sunbelt was
4 still not back until 1:30.

5 Q. All right. Did Sunbelt eventually come
6 back to the table?

7 A. Yes.

8 Q. And when Sunbelt came back to the
9 table, did they have any new proposals?

10 A. I don't recall.

11 Q. What do you recall the parties
12 discussing when Sunbelt came back to the table?

13 A. The union was frustrated with the lack
14 of counterproposals.

15 Q. What proposals were discussed?

16 A. The dues checkoff, the health, pension,
17 and wages.

18 Q. And with regard to wages, what do you
19 recall from the discussions around that topic?

20 A. That they weren't -- Pat Hill had
21 stated they are not going to get into any
22 economics yet.

23 Q. And after the discussion around wages,
24 what do you recall happening next?

25 A. Sunbelt took another caucus.

1 Q. And did the parties return to the table
2 from that caucus?

3 A. No.

4 Q. How did negotiations end that day?

5 A. About half hour after the caucus or
6 into their caucus Pat Hill came out and stated
7 that we had to end the session because Jason
8 Mayfield had to leave.

9 Q. How did the union respond to that?

10 A. We agreed.

11 Q. Who stated that for the union?

12 A. I believe it was Greg West.

13 Q. Are there any other discussions that
14 you recall occurring at the end of the session
15 that day?

16 A. Greg West did state that we could go
17 longer. We were able to continue on and Pat
18 Hill stated that we had to end it.

19 Q. Were you able to attend the parties
20 next bargaining session?

21 A. No.

22 Q. Did the parties -- Do you recall when
23 that session was scheduled?

24 A. March 21, 2019.

25 Q. Did the parties still meet on the

1 March 21st session?

2 A. Yes.

3 Q. I'd like to direct your attention now
4 to General Counsel Exhibit 39 or 38, excuse me.

5 A. Okay.

6 Q. Mr. Ervin, do you recognize this
7 document?

8 A. Yes.

9 Q. And what is it?

10 A. It's the RD petition that Brian
11 Anderson drew up for one of our members named
12 Mariano Rivera.

13 MR. WIESE: I'll offer General Counsel
14 Exhibit 38.

15 MS. HILL: Objection. I think there is
16 going to have to be some voir dire or cross
17 examination or something for him to say that
18 this was what Mr. Anderson drew up.

19 JUDGE ROSAS: Well, he says he knows
20 what it is. It's being offered now.

21 MR. WIESE: Yes.

22 JUDGE ROSAS: No other questions in
23 that regard, so...

24 MS. HILL: But he volunteered in
25 response to the question said it was drafted by

1 Mr. Anderson.

2 JUDGE ROSAS: Right.

3 MS. HILL: So we have the right to know
4 what's the basis of that before this can get
5 even entered for the purpose of what their --

6 JUDGE ROSAS: You have the right to ask
7 him whatever you want before it gets entered.
8 Go ahead.

9 VOIR DIRE EXAMINATION

10 BY MS. HILL:

11 Q. Okay. General Counsel's Exhibit 38,
12 you saw Mr. Anderson draft this?

13 A. No. His name is on it.

14 Q. Do you know whose handwriting that is?

15 A. No.

16 Q. Did you ask Mr. Rivera if Mr. Anderson
17 drafted this?

18 A. No.

19 Q. Who is Mr. Rivera?

20 A. Mr. Rivera is the bargaining unit
21 member that signed the bottom of this.

22 Q. Okay. So he was in the bargaining
23 unit. Did you know if he voted in favor of the
24 union back in March?

25 MR. WIESE: Objection. Relevance.

1 JUDGE ROSAS: As to whether he voted in
2 favor of the union? I am going to sustain that.
3 Next question.

4 BY MS. HILL:

5 Q. Okay. But as far as you know, Mr.
6 Anderson did not draft this?

7 A. I just know his name is at the top from
8 employer representative so that's the way I take
9 it is him drafting it because his name is on it
10 from employer representative at the top right
11 Line 3.

12 Q. I see the handwriting there, but I am
13 trying to understand how you can make that leap
14 that this is something Mr. Anderson drafted.

15 A. I just know that his name is on there.
16 I don't know who drafted it.

17 MS. HILL: Thank you.

18 JUDGE ROSAS: All right. It's being
19 offered nevertheless. Any objection?

20 MS. HILL: It is being offered. It can
21 be entered but not based on Mr. Anderson
22 drafting this.

23 JUDGE ROSAS: Well, the testimony is
24 what it is. So but --

25 MS. HILL: Yes, sir.

1 JUDGE ROSAS: There is no objection to
2 the document being what it purports to be so I
3 am going receive General Counsel's 38.

4 (GCX 38 received.)

5 DIRECT EXAMINATION (resumed)

6 BY MR. WIESE:

7 Q. Mr. Ervin, are you aware of what
8 happened with the decertification petition?

9 A. Yes.

10 Q. And what happened with it?

11 A. Mariano Rivera signed it. His name is
12 on the bottom. I did not see him sign it but
13 his name is on there. And it was filed and then
14 eventually pulled.

15 Q. Okay. Pulled by?

16 A. I'm assuming Sunbelt. I don't know.

17 Q. Okay.

18 A. It never went through.

19 Q. After March -- the March 21st session,
20 were you an attendance at the parties next
21 session?

22 A. Yes.

23 Q. When did that session take place?

24 A. April 30, 2019.

25 Q. Was the employer on time for these

1 negotiations?

2 A. No.

3 Q. What time were the negotiations
4 supposed to be done?

5 A. 8:30.

6 Q. What time did they actually begin?

7 A. 9:00 o'clock.

8 Q. Did the employer provide any
9 explanation as to why it arrived late?

10 A. Yes. Pat Hill stated that Jason
11 Mayfield was running late.

12 Q. Once the negotiations started, how do
13 you recall them beginning?

14 A. With a safety moment.

15 Q. After the safety moment, what do you
16 recall the parties discussing next?

17 A. We repropose our wages, health,
18 pension and admin dues.

19 Q. And with respect to the wages, to the
20 wage proposal how did the employer respond?

21 A. They declined with no counters.

22 Q. Did someone from the union request that
23 the employer provide a counter?

24 A. Yes. Greg West.

25 Q. Did the employer provide any counter

1 offers on any of the other items that the union
2 proposed at the beginning of that session?

3 A. No.

4 Q. And what do you recall the parties
5 discussing after that?

6 A. I remember Terry McGowan stating that
7 he felt that Sunbelt wasn't bargaining in good
8 faith with everything going on and Pat Hill had
9 stated that they believed they were bargaining
10 in good faith.

11 Q. Was there any discussion around the
12 topic of dues checkoff at that time?

13 A. Yes.

14 Q. And what do you recall from the
15 discussions around that item?

16 A. Terry McGowan had stated he wasn't
17 understanding why they would not enter into an
18 agreement when they have it in other locals that
19 they are assigned to nearby.

20 Q. And what response did the employer
21 have?

22 A. That they just weren't going to enter
23 into admin dues checkoff.

24 Q. Did the employer provide any further
25 explanation?

1 A. Just that they weren't going to do it.

2 Q. What happened after this discussion
3 over dues checkoff?

4 A. I believe at that point we took a
5 caucus.

6 Q. And how long did the union's caucus
7 last?

8 A. 20 minutes.

9 Q. Did the union come back to the
10 bargaining table with any new proposals after
11 that caucus?

12 A. Yes.

13 Q. And what was the union's new proposal?

14 A. We proposed a reduced pension, reduced
15 wages. I think that was it at that point.

16 Q. What response did the employer have to
17 the union's proposal?

18 A. I believe then they took a caucus.

19 Q. How long did the employer's caucus
20 take?

21 A. About an hour.

22 Q. Did the employer have a new proposal
23 when they came back to the bargaining table?

24 A. Yes. I believe at that point they
25 changed their 1.35 premium pay to 1.4.

1 Q. Okay. What about on the -- did that
2 proposal address anything with regard to wages?

3 A. Not at that time.

4 Q. And what about with regard to dues
5 checkoff?

6 A. Just that they were declining it.

7 Q. Did the employer provide any
8 explanation as to why it was declining dues
9 checkoff at that time?

10 A. No.

11 Q. After the employer presented this
12 proposal, what did the parties do?

13 A. Then we caucused.

14 Q. What was the purpose of that caucus for
15 the union?

16 A. We wanted to make some more concessions
17 and accept some of their proposals to show
18 movement.

19 Q. Approximately how long did that caucus
20 last?

21 A. 15, 20 minutes.

22 Q. Did the union come out of that caucus
23 with any updated proposals?

24 A. Yes.

25 Q. And what do you recall the union moving

1 on out of that caucus?

2 A. We omitted the national training fund
3 proposal that we had and we also changed our
4 original overtime after eight hours a day to
5 overtime after ten hours a day.

6 Q. Besides the union presenting this
7 proposal after the caucus, what else do you
8 recall the parties discussing?

9 A. Future dates.

10 Q. And what do you recall from the
11 discussion around future dates at that time?

12 A. Pat Hill stated that Sunbelt was too
13 busy to meet until June 5, 2019.

14 Q. Had the proposed -- had the union
15 proposed dates prior to that day?

16 A. Yeah. We were hoping for the following
17 week or earlier weeks.

18 Q. And who made that proposal for the
19 union?

20 A. I did.

21 Q. Did the parties agree to meet on
22 June 5th?

23 A. Yes.

24 Q. Why did the union agree to meet on
25 June 5th?

1 A. We were afraid if we didn't accept that
2 date that it would just be pushed back even
3 further and prolong everything.

4 Q. And after the discussion around dates,
5 what happened next in the bargaining unit?

6 A. I believe then Sunbelt took a caucus.

7 Q. How long was Sunbelt's caucus?

8 A. Roughly 45 minutes.

9 Q. Did the employer come back to the table
10 from that caucus with a new proposal?

11 A. I don't recall.

12 Q. Is there a document that would help to
13 refresh your recollection?

14 A. My affidavit.

15 Q. I am going to direct the witness'
16 attention to Page 4 of the affidavit
17 Paragraph 13 and I should reflect in the record
18 this is the witness' supplemental affidavit
19 given in this case.

20 A. I'm sorry. What numbers?

21 MR. WIESE: It was Page 4 I believe
22 Paragraph 13.

23 MS. HILL: Paragraph 13. Yep.

24 THE WITNESS: Thank you. Okay.

1 BY MR. WIESE:

2 Q. Is your recollection now refreshed?

3 A. Yes.

4 Q. Okay. So what, if any, changes did the
5 employer's proposal have?

6 A. They changed their 1.35 for premium pay
7 to 1.4.

8 Q. Were there any other changes in that
9 proposal?

10 A. They had no counters for the admin dues
11 and health and pension.

12 Q. With respect to the administrative
13 dues, what, if anything, do you recall from the
14 discussions around that topic?

15 A. Terry McGowan just again stated that
16 they have it in other locations why can't they
17 have it here.

18 Q. How did the employer respond to
19 Mr. McGowan's remarks?

20 A. Just that we weren't going to enter
21 into that agreement.

22 Q. And what happened next after that
23 discussion?

24 A. I believe then we took a caucus.

25 Q. Did the parties come back to the table

1 from the union's caucus?

2 A. No.

3 Q. What happened?

4 A. We had recommended a lunch break and
5 Pat Hill had stated that we had to end the
6 session because Jason Mayfield had a lot of
7 calls to make.

8 Q. And was that the end of the session?

9 A. Yes.

10 Q. Were you in attendance at the parties
11 next bargaining session after April 30th?

12 A. Yes.

13 Q. When was that session?

14 A. June 5, 2019.

15 Q. Had the union filed unfair labor
16 practice charges against the employer prior to
17 that session?

18 A. Yes.

19 Q. Were you aware of any developments in
20 the investigation of the unfair labor practice
21 charges prior to that June 5th session?

22 A. The Labor Board found merit to our
23 charge.

24 Q. Who was in attendance at this session
25 for each party?

1 A. June 5th it was for us, it was Steve
2 Buffalo, Greg West, Dan Marsolek, myself and
3 bargaining member Jamie Smith. For Sunbelt it
4 was Pat Hill, Jason Mayfield, Bo Bogardus and
5 Brian Anderson.

6 Q. Did the negotiations that day begin on
7 time?

8 A. Yes.

9 Q. How do you recall the negotiations
10 beginning on June 5th?

11 A. I handed out our comprehensive proposal
12 on what we believed had been TA'd and what had
13 been open.

14 Q. I'd like to direct your attention to
15 General Counsel Exhibit 6G.

16 A. Okay.

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. Okay. What is it?

20 A. It's the comprehensive proposal signoff
21 that I gave out at the start of the meeting on
22 June 5, 2019.

23 MR. WIESE: I'll offer General Counsel
24 Exhibit 6G.

25 THE WITNESS: Sir, I apologize.

1 Drinking all this water, I really got to go
2 again. Maybe for two seconds. Sorry. Sorry.
3 I'll try not to drink any more water.

4 JUDGE ROSAS: We'll take two seconds.

5 (Whereupon, a short recess was
6 taken.)

7 JUDGE ROSAS: Back on the record.

8 BY MR. WIESE:

9 Q. With respect to General Counsel
10 Exhibit 6G, what was the purpose of this
11 document?

12 A. Greg West and I put this together to
13 minimize the confusion so we could hand it to
14 him on that session and go through the entire
15 docket and make sure that we all agreed on
16 everything consistently or disagreed to
17 everything consistently basically to move us
18 forward because at this point, it's been over a
19 year and we still haven't gotten anywhere.

20 Q. Before we get into the discussions
21 around this document, do you recall whether the
22 employer had any new proposals at this session?

23 A. Yes.

24 Q. And what do you recall the employer
25 proposing?

1 A. They proposed a wage freeze. The first
2 year and a wage reopener the second and third
3 year and they again declined our health pension
4 and admin dues.

5 Q. With respect to the wage freeze, what,
6 if any, explanation did the employer provide for
7 why it was offering a wage freeze?

8 A. Pat Hill had stated it was due to the
9 economic downturn.

10 Q. And turning back now to General Counsel
11 Exhibit 6G, the signoff document, when you
12 handed this document out, what response did the
13 employer have?

14 A. At that point they took a caucus.

15 Q. Okay. And did the parties return to
16 the table after that caucus?

17 A. Yes.

18 Q. Okay. What discussions occurred after
19 the parties returned to the table?

20 A. Pat Hill had stated that the article
21 numbers -- some of the article numbers were off
22 and that there were some proposals not reflected
23 in our proposal.

24 Q. I am going to direct your attention to
25 General Counsel's Exhibit 12.

1 A. Okay.

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. It's the table of contents that Pat
6 Hill had said was wrong due to the -- off
7 articles and then on the bottom its got
8 signatures for Steve Buffalo, our chief of staff
9 signed it rejecting it asking Sunbelt to agree
10 to that.

11 Q. Do you know whose signature that is for
12 Sunbelt on the document?

13 A. We didn't see it signed but Pat Hill
14 stated it was Jason Mayfield's.

15 MR. WIESE: I'll offer General Counsel
16 Exhibit 12.

17 MS. HILL: Objection. Question, whose
18 handwriting is it at the bottom with the name of
19 the respondent over on the left-hand side?

20 THE WITNESS: The writing of Sunbelt?

21 MS. HILL: Yes.

22 THE WITNESS: That's Steve's. I
23 believe it's Steve's. Steve wrote out the whole
24 entire thing and then you guys told us Jason
25 Mayfield signed it.

1 MS. HILL: Okay. No objection.

2 JUDGE ROSAS: General Counsel's 12 is
3 received.

4 (GCX 12 received.)

5 BY MR. WIESE:

6 Q. After the parties signed off on General
7 Counsel Exhibit 12, what do you recall the
8 parties discussing next in negotiations?

9 A. Greg West asked Pat Hill to put
10 whatever articles that weren't reflected in ours
11 in writing for us.

12 Q. What response did Ms. Hill have?

13 A. She said she wasn't going to do that.

14 Q. And how did the negotiations conclude
15 that day?

16 A. We settled on a July 9th session date.

17 Q. Were the parties able to confirm any
18 tentative agreements?

19 A. Just this General Counsel Exhibit 12.

20 Q. Okay. Did the parties meet for
21 negotiations on July 9th?

22 A. Yes.

23 Q. What -- how do you recall those
24 negotiations beginning?

25 A. At the start of that negotiations, we

1 brought up the fact that bargaining unit member
2 and negotiating team member Jamie Smith was
3 fired for not taking the safety quiz, and I
4 wanted to show them where we have it in our
5 notes that they said that there weren't going to
6 be any reprimands prior to at negotiations
7 sessions for that and Bo Bogardus had stood up
8 and said that we were lying and then at that
9 time Dan got excited and then Pat Hill pulled
10 Sunbelt out of the room.

11 Q. Were all members of the employer's
12 negotiating team present at the beginning of
13 those negotiations?

14 A. No.

15 Q. Who was missing?

16 A. Jason Mayfield.

17 Q. How long were the parties at the table
18 before the employer took a break?

19 A. Ten minutes.

20 Q. And did the parties come back to the
21 table after that break? Did the parties discuss
22 a future negotiating date?

23 A. August 8, 2019.

24 Q. All right. I'd like to direct your
25 attention to General Counsel Exhibit 13.

1 A. Okay.

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. And what is it?

5 A. It's the E-mail that I sent to Pat Hill
6 that afternoon with this particular document
7 General Exhibit -- General Counsel Exhibit 6G
8 electronically. She had asked for it during
9 that session.

10 Q. So General Counsel Exhibit 6G was
11 attached to this E-mail chain?

12 A. Yes.

13 MR. WIESE: I will offer General
14 Counsel Exhibit 13.

15 MS. HILL: Could the court reporter
16 mind reading back his response, please?

17 (Whereupon, the record was read
18 as requested.)

19 MS. HILL: Okay. Just one question.

20 VOIR DIRE EXAMINATION

21 BY MS. HILL:

22 Q. During the July 9th session, correct?

23 A. Yes.

24 Q. Had it been requested prior to
25 July 9th?

1 A. Yes.

2 Q. And had you sent it?

3 A. No.

4 Q. So there is no E-mail prior to this
5 July 9th afternoon E-mail, correct?

6 A. You are correct.

7 MS. HILL: No objection.

8 JUDGE ROSAS: General Counsel 13 is
9 received.

10 (GCX 13 received.)

11 DIRECT EXAMINATION (resumed)

12 BY MR. WIESE:

13 Q. I'd like to direct your attention now,
14 Mr. Ervin, to General Counsel Exhibit 17.

15 A. Okay.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. What was is it?

19 A. It was an E-mail that was sent to our
20 chief of staff Steve Buffalo on August 7th. He
21 said he received it later afternoon and it was
22 stating that the August 8th bargaining session
23 was just going to be about the reorganizing of
24 that profit center 776 in Franksville.

25 MS. HILL: I apologize. My copy isn't

1 an E-mail. It's a letter. He just said it's an
2 E-mail. Do I have the wrong document?

3 MR. WIESE: No. You have the correct
4 document.

5 MS. HILL: Oh, okay.

6 BY MR. WIESE:

7 Q. How did you receive this letter?

8 A. Steve Buffalo received it in E-mail
9 form and then we printed it.

10 Q. Was this the first notice that the
11 union received of the reorganization of the
12 Franksville profit center?

13 A. Yes.

14 MR. WIESE: I'll offer General Counsel
15 Exhibit 17.

16 MS. HILL: No objection.

17 JUDGE ROSAS: General Counsel 17 is
18 received.

19 (GCX 17 received.)

20 BY MR. WIESE:

21 Q. Did the parties meet for bargaining as
22 scheduled on August 8th?

23 A. Yes.

24 Q. How did that meeting begin?

25 A. It started with a safety moment.

1 Q. After the safety moment, what did the
2 parties discuss next?

3 A. Pat Hill turned it over to Jason
4 Mayfield who stated that they were reorganizing
5 that profit center 776 to a will call and
6 customer pickup site only and they would no
7 longer need the services of the two remaining
8 bargaining union mechanics one Alan Romanowski
9 and Kyle McKellips and they were going to be
10 laid off effective the end of the business day.

11 Q. Okay. Did Mr. Mayfield explain why
12 they were being laid off that you can recall?

13 A. Just they said they wouldn't need them
14 based on the reorganizing of the shop to a will
15 call/customer pickup only.

16 Q. Did he explain what he meant by it
17 being a will call/customer pickup only facility?

18 A. Yeah. Just when a customer would come
19 in, they would have to -- there would be no like
20 deliveries or work on stuff. They would just
21 have small tools there. If they wanted bigger
22 items, they'd have to go to another shop.

23 Q. Okay. And after these remarks from
24 Mr. Mayfield, what do you recall the parties
25 discussing next?

1 A. The union took a caucus.

2 Q. And after that caucus, what happened?

3 A. The union Steve Buffalo asked if he
4 could see numbers for other shops in Wisconsin
5 and Illinois. I had asked if the two
6 individuals could be transferred and Jason
7 Mayfield said they did not have those skills to
8 be transferred to another shop, that I seen some
9 online even though Mariano Rivera who filed the
10 RD petition was going to be getting transferred
11 at that time.

12 Q. Did the parties discuss dates for
13 future negotiations?

14 A. Yes.

15 Q. Okay. And what did the union propose
16 for dates?

17 A. I proposed the week of August 19th.

18 Q. And how did the employer respond?

19 A. They responded with wanting to meet on
20 Friday, August 16, 2019.

21 Q. Did you agree to this date?

22 A. Yes.

23 Q. Did the parties meet on August 16th as
24 scheduled?

25 A. Yes.

1 Q. What was the focus of the parties
2 discussions on August 16th?

3 A. Effects bargaining.

4 Q. I am going to show you what's been
5 marked as -- I'd like to direct your attention
6 to General Counsel Exhibit 18.

7 A. Okay.

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. It's the proposal that we gave Sunbelt
12 on August 16, 2019 for severance package.

13 MR. WIESE: I'll offer General Counsel
14 Exhibit 18.

15 MS. HILL: No objection.

16 JUDGE ROSAS: General Counsel 18 is
17 received.

18 (GCX 18 received.)

19 BY MR. WIESE:

20 Q. At the parties meeting on August 16th,
21 were you able to reach a severance agreement
22 with the employer?

23 A. Yes.

24 Q. I'd like to direct your attention to
25 General Counsel's Exhibits 19 and 20. Do you

1 have those documents?

2 A. Yes, I am.

3 Q. Do you recognize this documents?

4 A. Yes.

5 Q. What are they?

6 A. It's the release agreements and
7 severance agreement for Alan Romanowski and Kyle
8 McKellips, the last two remaining bargaining
9 unit employees.

10 MR. WIESE: I'll offer General
11 Counsel's Exhibits 19 and 20.

12 MS. HILL: No objection.

13 JUDGE ROSAS: General Counsel's 19, 20
14 received.

15 (GCX 19-20 received.)

16 BY MR. WIESE:

17 Q. What process did the parties follow in
18 reaching the severance agreements in General
19 Counsel's Exhibits 19 and 20?

20 A. Based on their years of service, they
21 had a payout, they got any left over vacation
22 days they hadn't used and then somehow agreed to
23 pay COBRA for two months and then also agreed to
24 pay them through that date which they were
25 originally laid off on August 8th.

1 Q. And over the course of negotiating
2 these agreements, was there any discussion of
3 the unfair labor practices or unfair labor
4 practices?

5 A. I believe so.

6 Q. What do you recall from those
7 discussions?

8 A. I don't recall which session it was but
9 I do recall that we brought that to Sunbelt's
10 attention.

11 Q. Right. I am talking specifically as
12 you were negotiating these severance agreements,
13 was there a discussion of unfair labor
14 practices?

15 A. I don't recall.

16 Q. Did the parties reach any other
17 agreements besides the severance agreements
18 during the August 16th session?

19 A. No.

20 Q. Was that the last time that you met
21 with Sunbelt, August 16th?

22 A. Yes.

23 Q. Based on your time spent in
24 negotiations with Sunbelt, did the employer
25 appear to be bargaining in good faith with the

1 union?

2 A. No.

3 Q. Why not?

4 MS. HILL: By the way, objection.

5 JUDGE ROSAS: I am going to sustain
6 that. We don't need to get into the legal
7 conclusions that I have to arrive at.

8 MS. HILL: Thank you.

9 BY MR. WIESE:

10 Q. When did the company terminate the
11 remaining bargaining unit members?

12 A. August 8, 2019.

13 Q. Were there any bargaining unit members
14 employed after that date?

15 A. I don't believe so because they said
16 Mariano -- the bargaining unit members said
17 Mariano was transferred to another shop.

18 Q. I'd like to direct your attention to
19 General Counsel Exhibit 16.

20 A. Okay.

21 Q. Do you recognize this?

22 A. Yes.

23 Q. What is it?

24 A. It's a map of the area where Sunbelt's
25 Profit Center 776 is located.

1 MR. WIESE: I will offer General
2 Counsel Exhibit 16.

3 MS. HILL: Okay. First of all, to lay
4 a better foundation, did you prepare this map
5 and this is more along the lines of asking for
6 judicial notice of what the facility looks like
7 so how do you want to handle this?

8 JUDGE ROSAS: Is it a fair and accurate
9 representation as far as you are concerned as
10 far as what it looks like overhead or do you
11 need to inquire?

12 MS. HILL: As of what particular date?

13 JUDGE ROSAS: Okay.

14 MS. HILL: This doesn't look like --

15 JUDGE ROSAS: Sir, it's your testimony
16 that this is a fair and accurate representation
17 overhead of the location?

18 THE WITNESS: Yes, sir.

19 JUDGE ROSAS: As of what date?

20 THE WITNESS: It would have been
21 sometime in November. I don't know the exact
22 date.

23 MS. HILL: November of 2019?

24 THE WITNESS: Yes.

25 MS. HILL: Okay. And there is no

1 construction here, no nothing blocked off here,
2 correct?

3 THE WITNESS: That's when I -- but I
4 got this off of Google Maps. Google Maps isn't
5 updated. I take it off of Google Maps. In
6 November I took this from Google Maps.

7 MS. HILL: Okay. So maybe Mr. Wiese
8 can answer this.

9 JUDGE ROSAS: The relevance?

10 MS. HILL: Yes.

11 MR. WIESE: It's just to show the
12 facility and the surrounding area of the
13 facility. It will help explain evidence that's
14 going to be coming into the record shortly. I
15 am not -- so I understand what you are getting
16 at, Ms. Hill, with respect to, you know, this
17 being a representation of what sort of equipment
18 was at the facility on a given day, that's not
19 what it's being offered for.

20 MS. HILL: And also it has somebody's
21 trailer sales, things like that, it doesn't look
22 like what the profit center looked like during
23 the relevant time period of March 1st of 2018 to
24 August 8th of 2019.

25 JUDGE ROSAS: Does it or does it not?

1 THE WITNESS: No. It's a Google map
2 that I took a picture of --

3 JUDGE ROSAS: Recently?

4 THE WITNESS: In November. I took it
5 from Google in November. If Google wasn't
6 updated, I apologize for that.

7 JUDGE ROSAS: It is what it is. As of
8 Google November 2019. I'll receive it for
9 whatever purpose General Counsel is going to try
10 to tie it into and obviously, respondent, you
11 can provide any perspective that you need to as
12 well. So General Counsel 16 is received.

13 (GCX 16 received.)

14 BY MR. WIESE:

15 Q. Mr. Ervin, I'd like to direct your
16 attention to General Counsel Exhibit 21.

17 A. Okay.

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. And what is it?

21 A. They are pictures that I took on
22 August 19, 2019 around 2:00 p.m.

23 Q. And that would be in the first page of
24 the document; is that right?

25 A. Yes.

1 Q. Okay. And so I notice there is
2 timestamps on each page of these documents. Do
3 those timestamps reflect when the pictures were
4 taken?

5 A. Yes.

6 MR. WIESE: I will offer General
7 Counsel Exhibit 21.

8 MS. HILL: For what purpose?

9 JUDGE ROSAS: I assume are these a fair
10 and accurate representation of what that
11 equipment looked like on that location on
12 August 19, 2019?

13 THE WITNESS: Yes and a nonbargaining
14 unit member working out of that facility.

15 MS. HILL: Yeah, but there are other
16 dates on here, too, and he only said that he
17 only --

18 THE WITNESS: They are all time stamped
19 accordingly.

20 MS. HILL: He stated he took the
21 picture on August 19, 2019 in the afternoon. I
22 haven't heard anything about September 6th.

23 JUDGE ROSAS: Okay. Go ahead.

24 MS. HILL: October 24th, et cetera, now
25 if he wants to break these down into separate

1 exhibits --

2 JUDGE ROSAS: Well, let's cut to the
3 chase. You took pictures and they are dated.

4 MS. HILL: Did he take all these
5 pictures?

6 THE WITNESS: Yes, ma'am.

7 MS. HILL: Sunbelt objects to these.

8 JUDGE ROSAS: What grounds?

9 MS. HILL: Relevancy. Lack of
10 foundation. All right. That should do it.

11 JUDGE ROSAS: He said he took them so
12 what's the relevance?

13 MR. WIESE: The relevance is that it
14 shows individuals doing bargaining unit work at
15 the Franksville facility after the bargaining
16 unit employees were all fired.

17 MS. HILL: I know you are smiling with
18 the thumbs-up but -- that's the witness over
19 there -- but, your Honor, this -- we haven't had
20 a foundation as to who the individual was. Also
21 the two individuals who were laid off, contrary
22 to his statement, terminated, were mechanics so
23 we don't have a foundation as to how mechanics
24 should be doing this work that allegedly is
25 being done here and in some of these pictures,

1 there is no one --

2 THE WITNESS: I can explain.

3 JUDGE ROSAS: All right. So the
4 pictures are going in at a minimum as according
5 to the witness his statement, his testimony that
6 they are fair and accurate representation of the
7 equipment at the location and there is some
8 references to individuals. Now, that's good
9 enough to get this stuff into evidence.

10 Counsel is -- he elaborated on his
11 proffer. You can address it further on voir
12 dire but perhaps it's something for cross
13 examination.

14 MS. HILL: I will leave it for cross
15 examination, your Honor.

16 JUDGE ROSAS: And also, Counsel, what
17 counsel represents maybe what you are pointing
18 out maybe in the end doesn't suffice. I don't
19 know but it's certainly enough to get these
20 pictures into evidence. Overruled General
21 Counsel's 21 are received.

22 (GCX 21 received.)

23 MS. HILL: Thank you, your Honor.

24 JUDGE ROSAS: And this is a compilation
25 of 12 photographs different dates.

1 MR. WIESE: That's correct. I am going
2 to run through them.

3 BY MR. WIESE:

4 Q. So, Mr. Ervin, I'd like to have you
5 take a look at Pages 1 through 3 of the exhibit.

6 A. Okay.

7 Q. Where did you take these pictures from?

8 A. From the road that's in front of the
9 Sunbelt shop's yard.

10 Q. Do you recognize the individual in the
11 picture on Page 1 of the exhibit?

12 A. Yes, I do.

13 Q. Who is that?

14 A. It's Gary Stamm.

15 Q. Who is Gary Stamm?

16 A. He was the dispatcher at one point.
17 Somebody had said he was an operations manager,
18 too, but he was initially in our election he was
19 contested because he -- we wanted him in the
20 election because he was a -- he did bargaining
21 unit work. He drove but Sunbelt, Pat Hill,
22 requested he not be in it and since we won seven
23 to nothing, they let it go but at this point at
24 the time they were -- in the past, they were
25 showing he wasn't eligible to be doing

1 collective bargaining work and now here he is
2 doing collective bargaining unit work.

3 Q. Was Mr. Stamm part of the union at the
4 time this picture was taken?

5 A. No.

6 Q. What was notable from your perspective
7 about these pictures?

8 MS. HILL: Objection. Form.

9 JUDGE ROSAS: Rephrase that.

10 BY MR. WIESE:

11 Q. Why did you take these pictures?

12 A. These pictures were taken after I
13 followed him to the shop returning this delivery
14 and, again, because he was a nonbargaining unit
15 member doing bargaining unit work after Jason
16 Mayfield stated that they were going to be a
17 customer pickup shop only.

18 Q. I'd like to turn now to Page 4 of the
19 exhibit. Where did you take this picture from?

20 A. Again, from the street right in front.

21 Q. Do you recognize the individual in this
22 picture?

23 A. I do not.

24 Q. Why did you take this picture?

25 A. Because, again, they are as you can see

1 in the sequence some subsequent pictures he is
2 hooking up a load, he is delivering it
3 somewhere. I did not follow him and, again,
4 those are things that Jason Mayfield was not
5 going to happen out of that shop.

6 Q. And with respect to the subsequent
7 pictures that you are talking about, which pages
8 of the exhibit?

9 A. So it would be 4, 5 and 12 all on
10 September 6, 2019.

11 Q. 4, 5 and what page?

12 MS. HILL: 12 you said?

13 THE WITNESS: 6 of 12.

14 BY MR. WIESE:

15 Q. And with respect to the remaining
16 pictures in the exhibit on Pages 7 through 12,
17 where did you take these pictures from?

18 A. Again, from the road out in front of
19 their shop.

20 Q. And why did you take these pictures?

21 A. On October 24, 2019 I took these
22 pictures because it clearly shows that there is
23 larger equipment there that would be different
24 to what Mayfield stated as being a small tool
25 customer pickup only shop.

1 Q. I'd like to direct your attention to
2 General Counsel Exhibit 22.

3 A. Okay.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. And what is it?

7 A. On December 3rd, I took these pictures
8 off the website. You'll see the first couple
9 pages show the Franksville location so I went
10 online and you can access the Franksville shop
11 Profit Center 776, there was supposed to be a
12 small tool shop and it shows you can get various
13 large equipment. That wouldn't reflect a small
14 tool and then if you move forward to Page 4,
15 that shows the same equipment available at the
16 Waukesha shop.

17 Q. And when you say Page 4, are you
18 certain that was on Page 4 of the document or is
19 that a different --

20 A. I apologize. It is Page 5 of 44.

21 Q. And as you go through the remainder of
22 the document, Pages 9, through 11, is that also
23 equipment from the Franksville facility or that
24 you accessed through the Franksville facility?

25 A. Yeah. The Franksville website, yeah.

1 Every couple of pages I added a couple more
2 things like dozers and whatnot. Clearly not
3 small equipment and then, like I said, if you
4 move forward, you can get the same thing at the
5 Waukesha shop. I just replicated everything
6 that you can get from Franksville as you can at
7 Waukesha, large equipment.

8 Q. And how can you tell which facility the
9 equipment is accessed from?

10 A. For example, if you look at the top of
11 Page 1 it shows Franksville, Wisconsin location.

12 Q. Okay. And all of the -- did you access
13 all of these web pages on December 3rd?

14 A. Yes.

15 Q. 2019?

16 A. Yes.

17 MR. WIESE: I'll offer General Counsel
18 Exhibit 22.

19 MS. HILL: Objection as to relevancy.

20 MR. WIESE: Well, this is large
21 equipment that Mr. Ervin testified to that you
22 could access through the Franksville website. I
23 mean, the document essentially speaks for itself
24 but it has order rates for, you know, large
25 equipment here. I mean, you are talking about

1 full size bulldozers and things likes that that
2 are nowhere near what respondent represented
3 they would be holding at the Franksville
4 facility.

5 MS. HILL: Is he testifying also as to
6 whether that same equipment is at the facility
7 as of December 3, 2019, so what's the relevance?

8 MR. WIESE: His testimony speaks for
9 itself. I mean --

10 JUDGE ROSAS: Well, maybe his testimony
11 is lacking.

12 MS. HILL: Right. Right.

13 JUDGE ROSAS: He got it off the website
14 and I am going to receive it. Overruled.
15 General Counsel 22 is received.

16 (GCX 22 received.)

17 BY MR. WIESE:

18 Q. I'd like to direct your attention to
19 General Counsel Exhibit 39.

20 A. Okay.

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. It is the unfair labor charge that we
25 filed on behalf of Jamie Smith and Ramon

1 Gutierrez.

2 MR. WIESE: I'll offer General Counsel
3 Exhibit 39.

4 MS. HILL: Objection. Relevancy. This
5 is on appeal if I am not mistaken. Mr. Ryan
6 could probably testify as to that.

7 MR. RYAN: Actually, I believe they
8 denied -- they denied our appeal.

9 MS. HILL: Denied their appeal, so it's
10 completely irrelevant. I apologize. I started
11 to draw a blank. There have been so many.

12 MR. RYAN: There have been a few.

13 MR. WIESE: Your Honor, it's included
14 in the complaint as part of the payday 884
15 allegation.

16 JUDGE ROSAS: It's relevant to the 884
17 allegation. All right. Overruled. I'll
18 receive it, General Counsel's 39.

19 (GCX 39 received.)

20 MR. WIESE: Your Honor, so the
21 remaining exhibits that I need to enter are
22 videos that I was intending to show on the smart
23 board over there so I would like three minutes
24 to set it up.

25 JUDGE ROSAS: Okay. We will -- and how

1 much time do you have with that?

2 MR. WIESE: So the videos themselves
3 one of them is a minute, the other one is
4 approximately six minutes. With regard to the
5 six-minute video, there is only portions of it
6 that I think are necessary to show.

7 JUDGE ROSAS: That concludes your
8 questioning?

9 MR. WIESE: Yes. That's correct.

10 JUDGE ROSAS: All right. Let's get it
11 done.

12 MR. WIESE: Before we show the videos
13 and authenticate them, very important piece of
14 information for the record, so the videos are
15 encrypted, they are password protected and the
16 password is Section 7 ending in the number seven
17 all one word capital S, so...

18 JUDGE ROSAS: Okay.

19 MS. HILL: And no space.

20 MR. WIESE: That's correct. No space.

21 JUDGE ROSAS: All right. I assume,
22 Madam Court Reporter, we are going to go offline
23 at this point.

24 (Whereupon, videos shown.)

25 MR. WIESE: So this is General Counsel

1 Exhibit 23.

2 JUDGE ROSAS: Back on.

3 BY MR. WIESE:

4 Q. Mr. Ervin, we just watched the video
5 that's been previously identified as General
6 Counsel Exhibit 23. Did you take that video?

7 A. Yes.

8 Q. And when did you take that video?

9 A. On that August -- I don't recall
10 exactly. August 9, 2019.

11 MR. WIESE: I'll offer General Counsel
12 Exhibit 23.

13 MS. HILL: So I want to be sure his
14 testimony is what is going to be the date for
15 that.

16 MR. WIESE: Well, the video.

17 JUDGE ROSAS: That was your voice
18 speaking?

19 THE WITNESS: That is my voice in the
20 video. I'm sorry. I don't recall it right here
21 but that is my voice in that video.

22 JUDGE ROSAS: Okay. And you ascribe to
23 everything you said at that time is true and
24 accurate as to what you were perceiving at the
25 time?

1 THE WITNESS: Yes, sir.

2 JUDGE ROSAS: Any voir dire?

3 MS. HILL: I have a lot on cross
4 examination on this one. But with respect to
5 this one, again, Sunbelt objects as to
6 relevancy.

7 JUDGE ROSAS: General Counsel's 23 is
8 received over objection.

9 (GCX 23 received.)

10 MR. WIESE: For purposes of the record,
11 do we need to clarify on the record the date
12 that's mentioned in the video?

13 JUDGE ROSAS: There is a -- is the date
14 shown on there?

15 MR. WIESE: No, it wasn't.

16 MS. HILL: No. He is just claiming the
17 date.

18 JUDGE ROSAS: He mentioned it at the
19 time and he is testifying that he ascribes to
20 everything he said on there. So, okay. Off the
21 record.

22 (Whereupon, a discussion was had
23 off the record.)

24 JUDGE ROSAS: All right. Back on the
25 record. That's General Counsel's 24.

1 BY MR. WIESE:

2 Q. Mr. Ervin, with regard to General
3 Counsel Exhibit 24, where did you take that
4 video from the first portion of that video?

5 A. Sunbelt's shop on right off of Fuhrman
6 Road and located at the Profit Center 776.

7 Q. And is there a cut in that video?

8 A. Yes.

9 Q. And where is the second portion of that
10 video taken from?

11 A. The second portion of the video is when
12 I picked him up again we were driving around for
13 a while and he tried to drive in circles and
14 stuff like that and I shut it off. I have
15 everything recorded but I recorded or given you
16 guys what was relevant and basically that is
17 following him to a job site in Racine.

18 Q. So is that the same truck in the second
19 and first part of that video?

20 A. Yes.

21 Q. With regard to the date the video was
22 taken, is the information that you convey in
23 that video is that accurate as to your
24 recollection today?

25 A. Yes. Directly as it was happening.

1 MR. WIESE: Okay. I'll offer General
2 Counsel Exhibit 24.

3 MS. HILL: Objection. Relevancy.

4 JUDGE ROSAS: Do we have a date?

5 MR. WIESE: I believe.

6 THE WITNESS: I stated it in there.

7 MR. WIESE: It was stated in there.

8 THE WITNESS: November 7th.

9 MS. HILL: November 7, 2019 allegedly
10 at 6:00 a.m. No digital recording on the video.

11 JUDGE ROSAS: No digital recording?

12 MS. HILL: No digital date.

13 JUDGE ROSAS: Oh.

14 MS. HILL: No digital timestamp.

15 JUDGE ROSAS: Counsel proffers that it
16 depicts equipment that is different from the
17 equipment that was at that facility.

18 MR. WIESE: No. That it depicts
19 equipment that would be handled by bargaining
20 unit employees due to its size and type of work
21 that was being done. That's what all of this.

22 MS. HILL: But they haven't laid that
23 foundation yet. This was being delivered by an
24 outside hauler. This facility used outside
25 haulers.

1 JUDGE ROSAS: Counsel is articulating
2 that that's what the relevance is of that photo
3 hasn't proven that completely but --

4 MS. HILL: Correct.

5 JUDGE ROSAS: But there may or may not
6 be other testimony to tie that together. But
7 based on the proffer and the foundation provided
8 by the witness, I am going to receive it over
9 objection. General counsel's 24.

10 (GCX 24 received.)

11 MR. WIESE: Nothing further at this
12 time, your Honor.

13 JUDGE ROSAS: Charging Party, are you
14 going to have any questions at this point?

15 MR. RYAN: Probably just a few.
16 Nothing extensive if I can take a few minutes to
17 review.

18 JUDGE ROSAS: Why don't we do that when
19 we resume. How much time do you think you are
20 going to need to prepare for your cross?

21 MS. HILL: Several hours.

22 JUDGE ROSAS: You'll have cross for
23 several hours?

24 MS. HILL: Yes, sir.

25 JUDGE ROSAS: How much time are you

1 going to need for a brief lunch recess?

2 MS. HILL: I'll leave that up to you
3 gentlemen. Just tell me how much time I get and
4 we'll take it from there.

5 JUDGE ROSAS: All right. I don't know.

6 MR. WIESE: Do you want to break for an
7 hour?

8 JUDGE ROSAS: Okay. Let's resume at a
9 quarter to 3:00.

10 (Whereupon, a lunch recess was
11 taken.)

12 JUDGE ROSAS: Go ahead.

13 MR. WIESE: I'd just like to know while
14 we were off the record counsel for respondent
15 Pat Hill requested copies of Mr. Ervin's
16 affidavits which I did provide to her consisting
17 of the initial affidavit in case 18-CA-236643,
18 the supplemental affidavit in that same case and
19 then a third affidavit in case 18-CA-247528.

20 JUDGE ROSAS: Okay. All right.
21 Charging Party?

22 MR. RYAN: Thank you, your Honor. Good
23 afternoon, Mr. Ervin. I just have a few
24 follow-up questions from what General Counsel
25 had asked.

CROSS EXAMINATION

BY MR. RYAN:

Q. If I could just direct your attention to General Counsel Exhibit 6A.

A. Okay.

Q. Were you involved in preparing this document?

A. Yes.

Q. Was it based on something, an existing collective bargaining agreement?

MS. HILL: Objection. Leading.

JUDGE ROSAS: Was it based on what?

MR. RYAN: An existing collective bargaining agreement.

MS. HILL: It's leading.

JUDGE ROSAS: Where did it come from? They are born from -- All right. I'll allow it. I'll allow it.

THE WITNESS: Yes.

JUDGE ROSAS: What did it come from?

THE WITNESS: It was based off of our original. We were revising it.

BY MR. RYAN:

Q. But from a different agreement?

A. Yes.

1 Q. Okay. Was it from another local union?

2 A. Yes. It was a combination of Local 234
3 Michigan and Local 150 in Illinois both were
4 signatory to Sunbelt Rentals in those respective
5 areas.

6 Q. Why did you base that to work off of?

7 A. One, based off the local areas and two,
8 it was a similar language to what they were
9 already a party to.

10 Q. Thank you. And then you also testified
11 about the April 30, 2019 bargaining session and
12 discussion regarding the administrative duties
13 provisions. You said that that was similar or
14 Sunbelt had such an agreement in the nearby
15 area. Can you specify that?

16 A. Right over the border and Local 150
17 they have it and also across the lake in
18 Local 134 which is Michigan they have it.

19 Q. So by across the border you meant
20 Illinois?

21 A. Yes, sir.

22 Q. And was any explanation given by
23 Sunbelt as to why it was acceptable in Illinois
24 and Michigan but not in Wisconsin?

25 A. No.

1 Q. If you could take a quick look for me
2 at General Counsel Exhibit 21. Specifically the
3 first three pages of that.

4 A. Okay.

5 Q. Were these photographs taken the same
6 time as the video of that was introduced as
7 General Counsel's Exhibit 23 which was the Gary
8 Stamm?

9 A. Yes.

10 Q. I believe you testified that the video
11 was on August 9th; is that the correct date?

12 A. No. The correct date is August 19th.
13 I misspoke.

14 Q. And I just want to talk a little about
15 we'll start with Page 1 of General Counsel
16 Exhibit 21. In addition to the person there who
17 you -- I think you testified was Mr. Stamm, what
18 else do you see when you look at this
19 photograph?

20 A. If you look at the left middle of the
21 picture, you'll see an aerial lift along with
22 the same thing on the right middle side of the
23 picture and those are units that would have to
24 be towed behind and I wouldn't count those as
25 small tools as Mr. Mayfield stated the shop was

1 going to turn into.

2 Q. Okay. And on the next page Page 2 of
3 General Counsel Exhibit 21, what is that on the
4 flatbed?

5 A. That's an industrial sized forklift.

6 Q. And would that be the type of small
7 tool that you would expect at a will call
8 center?

9 A. No.

10 Q. And if you could look at Page 7 of
11 General Counsel Exhibit 21.

12 A. Okay.

13 Q. Could you describe some of the
14 equipment that you see in that photograph?

15 A. Yes. In the middle the picture
16 directly behind the yellow gas marking, there is
17 a skid-steer that probably weighs around
18 8,000 pounds because I used to operate those
19 when I worked in the field. Next to it you see
20 a couple of industrial size forklifts and to the
21 right of that skid-steer there is more aerial
22 lift that, again, I wouldn't consider a small
23 tool like Mr. Mayfield related to.

24 Q. And if we could skip over to Page 11 of
25 General Counsel Exhibit 21.

1 A. Okay.

2 Q. Could you describe the equipment that
3 you are seeing in that photograph?

4 A. If you look just right of the telephone
5 pole you see an orange piece of equipment. It's
6 what we call a tractor loader backhoe. It's got
7 a scooping bucket on the front and a hoe on the
8 back. Just right of that you see three
9 mid-sized mini excavators or what we call hoes
10 that, again, are definitely not small equipment;
11 and if you look in the background just to the
12 left of the Sunbelt sign you can see a larger
13 size excavator that is even bigger than the ones
14 in the forefront of the picture.

15 Q. And just flipping through the last page
16 Page 12 of General Counsel Exhibit 21, aside
17 from the stuff to the left of the Sunbelt sign,
18 is there anything else you see in that picture
19 of note?

20 A. I just got to find that page. Okay.
21 Yes. If you look to the far right in the middle
22 of the page, you'll see a telehandler. I used
23 to run those quite a bit at the company I work
24 for and those are definitely 30, 40,000 pound
25 machines.

1 Q. Just to get a little perspective on
2 where you took those photographs if we can take
3 a quick look at General Counsel Exhibit 16.

4 A. Yes.

5 Q. Just the first page of that.

6 A. Uh-huh.

7 Q. So where approximately would these
8 series of photographs have been taken?

9 A. They would be on the West Frontage Road
10 just a little to the upper right of where it
11 says Javier Trailer Sales, between there and
12 west the -- where the verbiage or the front that
13 says West Frontage Road, it would be right in
14 that spot.

15 Q. And I think I just want a couple quick
16 questions on General Counsel Exhibit 22. It's
17 this packet.

18 A. Oh, okay. I'm sorry. It's over here.
19 Okay.

20 Q. If I could actually have you turn
21 towards the back of that document page, we'll
22 start with Page 42.

23 A. I'm sorry. What?

24 Q. Page 42 of General Counsel Exhibit 22.

25 A. Okay. Okay.

1 Q. So when you accessed Sunbelt's website
2 to obtain this screen shot, how did you -- what
3 did you click on to say get to the part that
4 starts on Page 1 that shows Franksville with the
5 backhoe orders?

6 A. You can go to Sunbelt's location and
7 you can itemize whatever location you want and I
8 picked the Franksville location.

9 Q. And from there you clicked on a link to
10 see what equipment was?

11 MS. HILL: Objection. Leading.

12 JUDGE ROSAS: Sustained

13 BY MR. RYAN:

14 Q. Once you found the Franksville
15 location, what did you do next?

16 A. I clicked on equipment for rent.

17 Q. Okay. And then if you turn back to
18 Page 41, what did you do on that page to get to
19 the document say like the one on Page 12 listing
20 Waukesha equipment?

21 A. I clicked on the Waukesha location at
22 the website.

23 Q. Okay. And what did you do from there?

24 A. Then I clicked on equipment for rent.

25 MR. RYAN: I don't think I have

1 anything further, your Honor. Thank you.

2 JUDGE ROSAS: Okay. Respondent, are
3 you ready?

4 MS. HILL: Yes.

5 JUDGE ROSAS: All right.

6 MS. HILL: All right. Let's go off the
7 record for a little bit.

8 JUDGE ROSAS: Sure.

9 (Whereupon, a discussion was had
10 off the record.)

11 CROSS EXAMINATION

12 BY MS. HILL:

13 Q. Mr. Ervin, please look at General
14 Counsel Exhibit 4.

15 A. Okay.

16 Q. Are they in order?

17 A. Not anymore because when I was done
18 with them, I put them aside.

19 MS. HILL: Okay. Can we take a few
20 minutes just for him because I think it will
21 save us time.

22 JUDGE ROSAS: Sure.

23 THE WITNESS: I am good.

24 BY MS. HILL:

25 Q. Thank you, sir. All right. Directing

1 your attention to General Counsel Exhibit 4, and
2 I'll try to ask my questions in order.

3 A. Okay.

4 Q. What is Sunbelt's fiscal year?

5 A. I believe it ends in March. I don't
6 know.

7 Q. Did you ever ask Sunbelt when did its
8 fiscal year end?

9 A. No.

10 Q. Would you please look at the next
11 Exhibit 5E?

12 A. 5E.

13 Q. Yes, sir.

14 A. Okay.

15 Q. All right. Are these your only notes
16 from September 27, 2018?

17 A. Yes.

18 Q. Did you prepare notes like this where
19 you had time in, time out for any other
20 negotiation session?

21 A. No. This session Greg West was not
22 there so I was the primary note taker.

23 Q. So if you wanted to know starting times
24 and ending times for any of the negotiation
25 sessions, that Mr. West attended would you have

1 to go to his notes, correct?

2 A. We use his notes for everything except
3 for the one that he wasn't at, yes.

4 Q. And did you use his notes to prepare
5 your initial affidavit for 236643?

6 A. Yes.

7 Q. Okay. So it wasn't based on your
8 knowledge, correct?

9 A. It was based on our notes, his notes.

10 Q. On his notes?

11 A. Yes.

12 Q. Dates and times that you have in your
13 affidavit, correct?

14 A. Yes. Yes.

15 Q. Please look at 6A.

16 A. Forgive me. It must be messed up a
17 little in here. 6A.

18 Q. Yes, sir.

19 A. Okay. I apologize. It must be --

20 Q. It's the draft CPA with the word draft
21 across it.

22 A. Okay.

23 Q. 14 pages.

24 A. Uh-huh. You said A. I have D here.

25 Q. I have 6A. Just to help you a bit it's

1 the one that has a -- does your say 6A?

2 A. There was two of them so I just got to
3 find the other one.

4 Q. When did you provide this to Sunbelt?

5 A. I believe at the October 23, 2018
6 meeting.

7 Q. You didn't send an electronic version,
8 correct?

9 A. No.

10 Q. Did you ever send a proposal to Sunbelt
11 electronically prior to negotiation sessions?

12 A. No.

13 Q. And why not?

14 A. Greg West had stated he didn't want me
15 to do that.

16 Q. Wouldn't it have made the negotiation
17 processing a little faster?

18 A. Yeah.

19 Q. In the first negotiation session,
20 wasn't the union told by Sunbelt that it was the
21 first time they had never received an electronic
22 set of proposals from the union prior to the
23 first negotiation session?

24 A. Yeah. I believe so.

25 Q. And this proposal even though its

1 October 23, 2018 did not contain any wages,
2 correct?

3 A. Correct.

4 Q. Now this proposal you said was a
5 compilation of the Operating Engineers 324 out
6 of Michigan, correct?

7 A. This particular one that you have is
8 basically -- yes, it is. I'm sorry. Yes.

9 Q. Okay. Which of the 324 is in Michigan?

10 A. The larger shops they have two separate
11 agreements, there is large shops and there is
12 small shops and I received those from the
13 individuals over there based on the large shop
14 because this is a large shop.

15 Q. Okay. In your opinion Franksville is a
16 large shop. Okay. Now you received the
17 collective bargaining agreements from John
18 Sarafin?

19 A. Yes.

20 Q. Anyone else with the 324?

21 A. No.

22 Q. All right. Now you do know that the
23 324 has half a dozen eight separate collective
24 bargaining agreements, correct?

25 A. I am being told they have four or five.

1 They are working on five or they are working on
2 six but I was told they have four or five.

3 Q. But they have more than just one,
4 correct?

5 A. Yes.

6 Q. And you claim that it was your belief
7 that there is a large -- they have a contract
8 for a large operation and a contract for a small
9 operation in Michigan, correct?

10 A. Based on the equipment size, not the
11 shop itself.

12 Q. Just equipment size?

13 A. Yes. Yes, ma'am.

14 Q. Only for general tool, correct?

15 A. Yes.

16 Q. Now, perhaps you ought to explain to
17 the judge the difference among the divisions.

18 A. So you got -- Sunbelt has the general
19 tools which is what you see in some of those
20 pictures, telehandlers, excavators, loaders and
21 then they have the smaller shops which is I
22 think they call them pump and power where they
23 have small hand tools and stuff like that. I am
24 not completely aware of exactly all that the
25 smaller shops have. I just know that what John

1 had said from Local 324.

2 MS. HILL: Objection. Hearsay.

3 JUDGE ROSAS: Who is John?

4 MS. HILL: Move to strike. Serafin.

5 JUDGE ROSAS: John is --

6 MS. HILL: With the 324.

7 JUDGE ROSAS: Okay. So you can't refer
8 to something you are told by someone else.

9 THE WITNESS: Okay.

10 JUDGE ROSAS: However, you can allude
11 to conversations with individuals if it's part
12 of the chronology so after I spoke to John, for
13 example, I did this or did that what you did,
14 what you saw but not what someone heard unless
15 it's someone who is going to testify here. No?
16 Okay. Who can be cross examined or opposing
17 party's statement which is not the case, so,
18 okay. With that clarification, proceed.
19 Continue.

20 THE WITNESS: All I got -- received
21 from him was a copy of their collective
22 bargaining agreement. I did not see the shops
23 that they were a party to but I just was told
24 this was what we had for those kinds of facility
25 and that's what we worked off of.

1 BY MS. HILL:

2 Q. So you have no idea whether Sunbelt has
3 a different contract for Detroit compared to
4 Novi, Michigan, compared to Sterling Heights,
5 Michigan, compared to it's in Lansing, Michigan,
6 correct?

7 A. No.

8 Q. And the 150 out of Illinois, correct?

9 A. Yes.

10 Q. What percentage of the 150's contract
11 is in here?

12 A. Probably a smaller portion because 324
13 is more compatible to what we are.

14 Q. What do you mean by compatible?

15 A. Size and market share.

16 Q. That's the second time you have used
17 market share. Do you want to define that,
18 please?

19 A. They have -- In Local 150 they have a
20 very, very upper 90, maybe a hundred percent of
21 the market share. In Michigan they do not.

22 Q. The 324 doesn't have --

23 A. That's Michigan, yep.

24 Q. Right. Now, during any of the
25 negotiations, does Sunbelt ever tell you that

1 each profit center stands alone?

2 A. Yep.

3 Q. Did Sunbelt tell you during
4 negotiations that the budget for each profit
5 center is separate from the budget for another
6 profit center?

7 A. I believe so.

8 Q. Did you hear during negotiations that
9 Sunbelt's territory for a profit center differs
10 from profit center to profit center?

11 A. Uh-huh.

12 Q. Verbal for the court reporter.

13 A. Yes.

14 Q. Thank you. Are you aware that Sunbelt
15 also has contracts, several contracts, with
16 Operating Engineers in southern Illinois?

17 A. Yes.

18 Q. Did you contact them for some sample
19 language?

20 A. Nope.

21 Q. Why not?

22 A. I took what was closest to us.

23 Q. Now, during negotiations, didn't
24 Sunbelt tell you during discussions --

25

1 (Whereupon, a discussion was had
2 off the record.)

3 MS. HILL: Are we okay? All right.

4 JUDGE ROSAS: Back on the record.

5 BY MS. HILL:

6 Q. Going my last question to him was that
7 it has contracts where Sunbelt does not deduct
8 the dues from the employee's paychecks?

9 A. I don't recall that.

10 Q. You don't recall Sunbelt referencing
11 you to its contract -- one of its contracts in
12 St. Louis?

13 A. I'm sorry. I don't recall.

14 Q. And you don't recall Sunbelt also
15 referring you to a contract it has with
16 teamsters out on the east coast in which it does
17 not have dues deductions?

18 A. I don't recall.

19 Q. Now for purposes of this agreement, you
20 didn't even go to the Operating Engineers 513
21 out of St. Louis, correct?

22 A. You are correct.

23 Q. And why not?

24 A. Again, I went from with the closest
25 facilities to us.

1 Q. Did you even contact them?

2 A. I know they signed with you guys. I
3 didn't contact them about any agreements because
4 they are a little farther away than the two that
5 we referenced.

6 Q. Just because they are farther away but
7 you are not driving to them. You are just
8 picking up a phone or sending an E-mail, right?

9 A. At one point you guys -- guys
10 referenced in the negotiations that it's all
11 based on the areas so I utilized that to take
12 that into consideration.

13 Q. Well, in answer to my question, you
14 could have just picked up the phone or sent an
15 E-mail to any of the organizers or the president
16 or vice president of any of those unions, too,
17 correct?

18 A. Sure.

19 Q. And you failed to do so, correct?

20 A. Yeah.

21 Q. You have mentioned several times in
22 response to questions from the general counsel's
23 attorney about safety moments.

24 A. Uh-huh. Yes. Sorry.

25 Q. Okay. Did the union have an objection

1 to the safety moment?

2 A. Initially Greg West had asked why we
3 needed to do it and you guys said it's something
4 you always do even though you only did it five
5 out of the, well, 13 sessions that I was at.

6 Q. If Sunbelt disagrees with your
7 statement about five out of whatever number you
8 were there, would you agree that it was done
9 more often?

10 A. No. Because we have it in our notes.

11 Q. In your notes or someone else's notes?

12 A. Greg's notes.

13 Q. And his notes are perfect, correct?

14 A. He is the primary note taker.

15 Q. My question was his notes are perfect?

16 A. I don't think anybody's are perfect,
17 no.

18 Q. With respect to the safety moment --

19 A. Uh-huh.

20 Q. -- any objection from the union
21 regarding having it?

22 A. Just what I just stated.

23 Q. Did the union ever provide the safety
24 moment?

25 A. Yeah because you asked us to.

1 Q. And did the union object to it?

2 A. No because we wanted to move forward.

3 Q. Would you agree that safety is a number
4 one concern for Sunbelt?

5 A. I don't know. That's your business.

6 Q. Well, during one of the negotiation
7 sessions didn't Sunbelt discuss a recent death
8 of a Florida employee?

9 A. Yes.

10 Q. And didn't the union want to know why
11 Sunbelt had safety quizzes?

12 A. Yes.

13 Q. And didn't Sunbelt provide you a
14 justification for the safety quizzes?

15 A. Yes.

16 Q. And was the union satisfied with its
17 justification of having safety quizzes?

18 A. I don't know if we were satisfied. We
19 just wanted to move forward.

20 Q. Did the union ask for a copy of a
21 safety quiz?

22 A. Yes.

23 Q. Did Sunbelt provide it?

24 A. Yes.

25 Q. Now, isn't -- you had an objection

1 about Mr. Ryan Anderson having a safety moment
2 discussing deer but it wasn't just deer,
3 correct?

4 A. No. He talked about the concern of
5 deer running around and cars running into them
6 in the middle of the summer.

7 Q. No. Well, I'm sorry. Middle of the
8 summer. What's the Wisconsin definition of
9 middle of summer?

10 A. June 26, 2018 is when that happened.

11 Q. And that negotiation, though, I thought
12 you said was May 22, 2018.

13 A. No. Our first safety moment was not
14 until June 26, 2018. We did not have a safety
15 moment on May 22, 2018. We started on June 26,
16 2018.

17 Q. Did Sunbelt explain that Sunbelt has
18 safety moments for any meeting in which there
19 are four or more attendees?

20 A. Yes, you did.

21 Q. And did Sunbelt also explain to you
22 that the safety moment can be for
23 teleconferences also with four or more
24 employees?

25 A. I believe so.

1 Q. You mentioned several times under
2 examination by the general counsel's attorney --

3 MS. HILL: And excuse me Judge Rosas, I
4 just mentioned -- realized am I talking too fast
5 for your notes?

6 JUDGE ROSAS: No. You are fine. No.
7 You are fine. I am not keeping up with you guys
8 anyway typing wise.

9 MS. HILL: Okay. Thank you.

10 BY MS. HILL:

11 Q. You mentioned several times about my
12 travel from Florida. Did Sunbelt ever raise
13 that as a concern during negotiation sessions?

14 A. No. We were just trying to accommodate
15 you.

16 Q. Okay. Would you please look at 6G?

17 A. Okay.

18 Q. When was 6G given to Sunbelt?

19 A. June 5, 2019.

20 Q. How was it given to Sunbelt?

21 A. In person at our negotiation session.

22 Q. And explain because I am not sure if it
23 all came out during direct examination, what was
24 the purpose of 6G?

25 A. Yes. The purpose was for us to move

1 forward together and either accept or reject or
2 show table the signoff so that we know exactly
3 where we were because there was a lot of
4 confusion on where we were, this way there will
5 be no confusion and everybody will know where we
6 are at.

7 Q. Why didn't you send this to Sunbelt
8 electronically before the June 5, 2019
9 negotiation session if you really wanted
10 negotiations to move forward?

11 A. Greg West told me not to.

12 Q. Did you specifically ask if you could
13 send this electronically?

14 A. Yes. Yes, I did.

15 Q. Now, in response to seeing this, what
16 did Sunbelt ask?

17 A. You guys wouldn't go through with it
18 until we countered the proposals that you gave
19 us previously.

20 Q. Well, with respect to this, did the
21 union gave Sunbelt directions to review this to
22 make sure that it was accurate and to sign off
23 on it, correct?

24 A. Yes.

25 Q. I apologize for the compound question;

1 but, anyway, you got it. With respect to that
2 request from the union, did Sunbelt caucus?

3 A. Yes.

4 Q. And then did Sunbelt come back with a
5 request?

6 A. Yeah. You had asked me to E-mail or to
7 send it to you and Steve told me I could so I
8 did that afternoon.

9 Q. All right. No. We are talking June 5,
10 sir.

11 A. That's the same -- oh, yes, ma'am.
12 Yes.

13 Q. June 5th?

14 A. Yep. Yep. There is 13 sessions. I
15 apologize if I can't remember every one of them.

16 Q. Sir, I can understand. With respect to
17 June 5th, Sunbelt requested an electronic
18 version, correct?

19 A. Yes.

20 Q. And Sunbelt's justification for asking
21 for an electronic version so that it could
22 review as requested by the union the TA'd
23 provisions to make sure everything was accurate,
24 correct?

25 A. Yes.

1 Q. Between June 5th and the morning of
2 July 9th, did you do what was requested of you,
3 sir?

4 A. No.

5 Q. And why not?

6 A. Greg West told me not to.

7 Q. So when Sunbelt and the union had sort
8 of what you described a very briefly negotiation
9 session on July 9th, would you agree part of the
10 reason for the shortness of the negotiation
11 session was because you, the union, had not
12 forwarded as promised the electronic version of
13 this so Sunbelt could review it?

14 A. Not completely.

15 Q. There was another issue? You said -- I
16 said part of the reason --

17 A. Right.

18 Q. -- the other reason was we'll get to
19 it, Mr. Smith, correct?

20 A. That was on July 9th but on July 5th,
21 we wanted to go through this line by line item
22 by line item and you wouldn't at the table.

23 Q. Because we wanted to review it with the
24 TA'd provisions, correct?

25 A. We wanted to review it in person and

1 you wouldn't do it.

2 Q. Did we say it would take less time if
3 we could do a red line comparison of the two
4 Word versions and get it done and be able to
5 respond to you at the July 9th negotiation
6 session?

7 MR. WIESE: Objection, your Honor.
8 Vague. I mean, these questions are all being
9 phrased in terms of we and Sunbelt and I would
10 appreciate if the speaker in all these questions
11 that are being asked to Mr. Ervin if that person
12 could be identified if respondent knows who that
13 is.

14 JUDGE ROSAS: Can you answer that?

15 THE WITNESS: Yeah. Pat Hill was
16 basically the main spokesperson for Sunbelt.
17 She did ask me after June 5th if I could provide
18 this electronically but what the union wanted --
19 BY MS. HILL:

20 Q. Just a moment. Not after June 5th. On
21 June 5th, correct?

22 A. Yes. To give it to you after the
23 session before the July 9th session, yes.

24 Q. And Mr. West wouldn't let you do that?

25 A. No because we had wanted to go through

1 it with you individually together so there would
2 be no confusion because we have had other times
3 where we did red lining and it was back and
4 forth and back and forth. We wanted to sit down
5 at the table productively go through it
6 together.

7 Q. But, sir, you -- we also said we
8 tried -- did Sunbelt try to caucus and go
9 through it line by line?

10 A. Yeah but all you said was the table of
11 contents was wrong. We wanted to go through it
12 with you.

13 Q. And if the witnesses for Sunbelt say
14 that you didn't want to sit there and go line by
15 line during negotiation session but rather have
16 Sunbelt do it during a caucus, would that be an
17 incorrect statement?

18 A. No. That's what you wanted. What we
19 wanted to go through it right there. You,
20 Sunbelt, did not want to go through it at the
21 table and that was Steve Buffalo's argument that
22 no. We are not going to move forward until we
23 go through it at the table.

24 Q. And did Sunbelt and did the union agree
25 to Sunbelt's request to send it electronically?

1 A. Yeah. Eventually.

2 Q. Between June 5th -- excuse me --
3 June 5th and July 9th, the union had time to
4 electronically send a request for more documents
5 to Sunbelt, correct?

6 JUDGE ROSAS: I think you need to move
7 on to the next sequence. That's asked and
8 answered twice. I got the picture.

9 MS. HILL: No. Request for additional
10 documents, sir. This is a different.

11 JUDGE ROSAS: Go ahead. Go ahead.

12 BY MS. HILL:

13 Q. So between June 5th and July 9th, the
14 union sent a request for additional documents to
15 Sunbelt, correct?

16 A. We sent you a request?

17 Q. Uh-huh.

18 A. I don't recall that.

19 Q. Okay. We'll get that out later then.
20 Looking at 7A.

21 JUDGE ROSAS: Let me get that back.

22 THE WITNESS: What was it 6A?

23 MS. HILL: No. 7A.

24 THE WITNESS: Yeah. That was for him.

25 Okay.

1 BY MS. HILL:

2 Q. And you testified that all the
3 handwriting on this is yours, correct?

4 A. Yes.

5 Q. And pension and admin 1 of 4, there is
6 a star up there it says Pat Hill says there is
7 new NLRB rules?

8 A. Yes.

9 Q. Was that a justification for presenting
10 this proposal to the union?

11 A. No. That was my notes.

12 Q. Do you know if the union asked why
13 Sunbelt had this proposal? I am just talking
14 about 1, Page 1.

15 A. No.

16 Q. Why did you write the note there?

17 A. Because that's what you told me.

18 Q. Okay. So I explained to you or the
19 union why this proposal was being made?

20 A. Yeah. You did.

21 Q. Page 2, this now this provision page,
22 excuse me, Page 1 and Page 2 were TA'd on
23 June 28th, correct?

24 A. Yes. June 26th. It was a typo.

25 Q. Okay. So it was 26th. Thank you.

1 A. Uh-huh.

2 Q. A handwritten mistake. Okay. What do
3 you mean by your handwriting Sunbelt's add to
4 issued May 22, 2018?

5 A. That's when you gave it to us.

6 Q. Add to, issued?

7 A. Add to 7.1 issued on that day. They
8 are separate, add to 7.1. You were adding this
9 language into 7.1 of our agreement. Issued is a
10 separate writing as far as whether it was issued
11 to us.

12 Q. Okay. So Sunbelt was using the
13 original document that you had forwarded to it
14 and adding some supplemental language to it,
15 correct?

16 A. Yes. And the reason why I have that
17 number underlined is because you didn't put that
18 on there, you didn't put what article it was
19 from so we had to filter through and figure out
20 what article number it was from.

21 Q. Well, isn't it true that the parties
22 had discussed having a general article for some
23 of the provisions that didn't catch all of the
24 other articles?

25 A. I believe that was at a later date.

1 Q. You believe but sitting here today,
2 sir, are you positive?

3 A. I am pretty positive, yes.

4 Q. In any of the notes that you wrote that
5 you see in front of you?

6 A. No.

7 Q. Looking at Page 3 of 4, is this
8 provision was this a provision that was
9 ultimately TA'd?

10 A. I believe it was.

11 Q. All right. And this one you had to
12 talk to Mr. Ryan, correct?

13 A. We talked about it.

14 Q. For approval?

15 A. Yeah. We talked to him about it.

16 Q. All right. With respect to other
17 proposals from Sunbelt, the parties could not
18 discuss them until Mr. Ryan or someone from his
19 firm had reviewed the proposals, correct?

20 A. Not every time, no.

21 Q. Did my question ask every time or did I
22 say were there provisions, proposals that the
23 union could not discuss until after they had run
24 them past Mr. Ryan?

25 A. Yes. Some of them.

1 Q. Thank you. Greg, union reserves the
2 right to grieve. What does that mean?

3 A. That's just our -- my notes and our
4 caucus. Basically that's Greg stating that we
5 have the right -- we reserve the right to
6 grieve, to file a grievance.

7 Q. Okay. Was that a counterproposal to
8 this language?

9 A. No.

10 Q. Did the union ever make that proposal?

11 A. That's just my notes of me talking at
12 our caucus being productive.

13 Q. Okay. But you discussed it but did you
14 make it a proposal?

15 A. I don't recall.

16 Q. In red, what does that mean?

17 A. Those are the red lines that you guys
18 had.

19 Q. Changing allegation up to and including
20 arbitration. Was that supposed to be another
21 revision to this proposal?

22 A. No. This proposal describes GPS. This
23 is just my notes on what you guys gave me when I
24 was sitting there in our caucus. Allegations up
25 to including arbitration has nothing to do with

1 GPS installed on equipment.

2 Q. Well, because there is that language in
3 the second line it says GPS to discipline
4 employees up to and including termination.

5 A. Uh-huh.

6 Q. So were you going to counter and say
7 this would then be open to arbitration?

8 A. I don't know. Sorry.

9 Q. All right. Looking at 4 of 4, sir.

10 A. Yes.

11 Q. This, again, has your handwriting on
12 it, correct?

13 A. Yes.

14 Q. Add to, again, this is supposed to be
15 for Article 18?

16 A. Yes.

17 Q. Did the parties negotiate where some of
18 these proposals from Sunbelt were to be
19 included?

20 A. I think so. That's pretty hard to
21 remember over a year ago.

22 Q. And this proposal on Page 4 of 4 was
23 TA'd on June 26th of 2018, correct?

24 A. Yes.

25 Q. Other than the draft agreements that we

1 have seen as exhibits, any counterproposals made
2 by the union were they made verbally?

3 A. They had to be when we were in session
4 because we had nowhere to print them. You
5 wouldn't allow us to use your printer so we had
6 to do it verbally at that session.

7 Q. Did you ask to use Sunbelt's printer?

8 A. No.

9 Q. And if Sunbelt had negotiation sessions
10 at the union hall in Pewaukee, they would have
11 to use the union's printer, correct?

12 A. Yes.

13 Q. Now, just for the benefit of the judge,
14 and maybe the two attorneys over there, do you
15 want to describe the negotiation room and then
16 maybe a little bit of the front office of
17 Sunbelt at Franksville where Sunbelt negotiated
18 or caucus -- excuse me -- caucused. Okay.

19 A. The union caucused in the same
20 negotiations room which was your Sunbelt's
21 conference room. Directly outside of that room.

22 Q. Okay. Just a minute. The size of the
23 conference room --

24 A. Very small.

25 Q. About the --

1 A. Like -- right.

2 Q. A third --

3 A. Yes.

4 Q. -- of this, had a conference table?

5 A. Yes.

6 Q. Everyone had a chair?

7 A. Yes.

8 Q. Okay. It had two walls of windows?

9 A. Yes.

10 Q. And then the door into and out of it
11 went into you might say the store room, the
12 store of the profit center, correct?

13 A. Yes.

14 JUDGE ROSAS: Hold on one second. You
15 can't just leave it at quote, unquote this. You
16 guys are all going to have to converge to have
17 some sort of an approximation here.

18 MS. HILL: Okay. I was thinking.

19 JUDGE ROSAS: Off the record.

20 (Whereupon, a discussion was had
21 off the record.)

22 BY MS. HILL:

23 Q. All right. Mr. Ervin, is Respondent's
24 Exhibit 1 a fair representation of the front of
25 the property center in Franksville along with

1 the conference room where the restrooms are and
2 the front counter and Mr. Anderson's office?

3 A. Yes.

4 Q. What was Mr. Anderson's office used
5 for?

6 A. The caucus room for Sunbelt. I didn't
7 know that was his office but that's where you
8 guys caucused.

9 Q. And was his computer used for purposes
10 of drafting the written proposals?

11 A. I would assume so. I didn't see that.
12 You are in that room, how would I know that?

13 Q. The window in front.

14 A. I could see out of our conference
15 people in the general area by the counter and
16 the tools. We could not see what you were doing
17 inside of that room unless I came --

18 Q. And you came to that office at least
19 twice, correct?

20 A. Yes.

21 Q. All right. Because you already
22 testified that you saw allegedly saw something
23 going on there, correct?

24 MR. WIESE: Objection, your Honor.
25 Mischaracterizes prior testimony.

1 JUDGE ROSAS: I'll let it stand. The
2 record will speak for itself.

3 MS. HILL: Okay. And by the way, your
4 Honor, at this point, I was going to save this
5 until the end but I want to make sure I don't
6 miss it in my notes. I wish to move to strike
7 all of Mr. Ervin's testimony relating to times
8 other than what appears on Exhibit 5E because
9 his affidavit was used to refresh his
10 recollection but everything from that affidavit
11 with respect to time was based on Mr. West's
12 notes.

13 JUDGE ROSAS: Well, you got to cross
14 examine him, right, with respect to his prior
15 statement in the affidavit or you will.

16 MS. HILL: I haven't gone into it but I
17 will. But he just admitted all the times in
18 there for the different negotiation sessions
19 that at least he attended were based on
20 Mr. West's notes.

21 JUDGE ROSAS: Yeah. I don't strike
22 testimony in mass during hearings. I wait until
23 I review the record in the entirety but
24 obviously you'll set up the predicate for your
25 application in that regard.

1 MS. HILL: Thank you, sir.

2 BY MS. HILL:

3 Q. Now, with respect to your testimony
4 about a member the Sunbelt team being at the
5 counter.

6 A. Yes.

7 Q. Okay. And who was that, sir?

8 A. That was Bo.

9 Q. Mr. Bogardus?

10 A. Bogardus.

11 Q. Could you hear what he was saying?

12 A. No.

13 Q. You have no clue whether he was calling
14 someone to get information regarding anything to
15 be placed in a proposal, correct?

16 A. No. He had -- he was working with
17 other Sunbelt employees not relating to
18 negotiation team were talking to him so that's
19 what led me to believe and us to believe that
20 that wasn't involved in negotiations.

21 Q. So did all the other team members hear
22 what he said, is that what you are saying?

23 A. No. No. No. What I am saying is when
24 I seen him doing that -- when we seen him doing
25 that, he was around other office help or I don't

1 know who they were but they weren't part of the
2 negotiating team. They were support staff, what
3 have you so that would lead me to believe that
4 that's not relevant to negotiations because he
5 was talking with his support staff.

6 Q. But you couldn't hear what he was
7 saying?

8 A. I could see his mouth moving.

9 Q. But you could not understand what he
10 was saying?

11 A. No.

12 Q. And so you were just guessing?

13 MR. WIESE: Objection. Argumentative.

14 JUDGE ROSAS: I will sustain that.

15 BY MS. HILL:

16 Q. But you have no evidence to support the
17 statement that you made?

18 MR. WIESE: Objection. Argumentative
19 again.

20 JUDGE ROSAS: Rephrase that.

21 BY MS. HILL:

22 Q. Okay.

23 JUDGE ROSAS: Because the evidence is a
24 little conclusory.

25

1 BY MS. HILL:

2 Q. Well, I could lead on this one. Do you
3 have any evidence to support your statement that
4 he was not working on proposals on behalf of
5 Sunbelt?

6 A. The best evidence is that he was with
7 people that were not involved in negotiations so
8 that's the best evidence that I have.

9 Q. The only evidence, correct?

10 A. Yes.

11 Q. Now, if you would please look at 7B, B
12 as in boy.

13 A. Yep. Got it.

14 Q. Okay. These typed proposals. Those
15 are from Sunbelt, correct?

16 A. Yes.

17 Q. And would you agree that the paid time
18 off proposal was a significant proposal for
19 purposes of the Collective Bargaining Agreement?

20 A. Yes.

21 Q. The discrimination proposal, and by the
22 way, again, the handwriting on Page 3, this is
23 yours, correct?

24 A. Yes.

25 Q. And the dates are incorrect?

1 A. I fixed the top one but the bottom one
2 is inaccurate. It was June 26, 2018.

3 Q. Thank you. And this was a proposal to
4 change or revise the union's proposal regarding
5 discrimination, correct?

6 A. Yes.

7 Q. Because the union -- the union agreed
8 that the law of Michigan or the law of Illinois
9 was not applicable to the Law of Wisconsin,
10 correct?

11 A. I don't know that that's why we agreed
12 to it, but -- I don't recall that that's why we
13 agreed to that.

14 Q. Now, Page 4, is this one of the
15 proposals that the union could not respond to
16 until it had discussed it with its attorney?

17 A. Yes, but we discussed it with them
18 during our caucus as you can see underneath.

19 Q. But -- Okay. But it says 7/16 Pat Ryan
20 good with. I thought you said this was from
21 June 26th.

22 A. I must have gotten that wrong.

23 Q. What part of it is wrong?

24 A. If I wrote 7/16 of '18 Pat Ryan good
25 with that must have been --

1 Q. When you had the discussion with
2 Mr. Ryan?

3 A. Yes, ma'am.

4 Q. So it was not during the caucus on
5 June 26, 2018, correct?

6 A. Yes.

7 Q. All right. Page 5 of 12. This typed
8 proposal is from Sunbelt on June 26, 2018,
9 correct?

10 A. Yep.

11 Q. And this -- and there was some
12 negotiating back and forth as to the location of
13 the bulletin board?

14 A. Yes, there was.

15 Q. But ultimately the parties agreed to
16 have it on a board by the lockers, correct?

17 A. Yes.

18 Q. And that was decided and agreed to on
19 June 26th, correct?

20 A. Yes.

21 Q. Okay. Now looking at 6 of 12,
22 handwriting all yours?

23 A. Yes.

24 Q. Okay. Can you explain what was TA'd
25 here?

1 A. We eventually TA'd going weekly, or
2 excuse me, biweekly we originally were not good
3 with biweekly and then we eventually TA'd
4 biweekly.

5 Q. And it was TA'd on June 26, 2018,
6 correct?

7 A. I believe so, yes.

8 Q. And the additional language that
9 Sunbelt had regarding the pay stubs, Sunbelt was
10 good -- excuse me -- the union was good with
11 that language, correct?

12 A. Yes.

13 Q. Management writes provision, proposed
14 on Page 7 of 12 of this document. Do you see
15 that, sir?

16 A. Yep.

17 Q. And this one again you could not TA it
18 on June 26th because you had to discuss it with
19 Mr. Ryan, correct?

20 A. Yes.

21 Q. And that did not happen, that
22 discussion with Mr. Ryan did not happen until
23 July 16th of 2018, correct?

24 A. Yes.

25 Q. Page 8 of 12 this, again, was another

1 proposal by Sunbelt on June 26th, correct?

2 A. Yes.

3 Q. Okay. Explain -- no offense to your
4 handwriting, sir.

5 A. That's not my handwriting on this one.

6 Q. Where, at the top?

7 A. On the top of Page 7B, that's not my
8 writing.

9 Q. Top of 7 --

10 A. 7B.

11 Q. Okay.

12 A. Page 9. I'm sorry. Page 9 of 7B. I'm
13 not --

14 Q. Hold on. I am still on 8.

15 A. You are on Page 8?

16 Q. Yes.

17 A. Oh, I'm sorry.

18 Q. We were on 7. I am going to 8. Okay.

19 No offense to your handwriting. Is that your
20 handwriting below the typed version?

21 A. Yes.

22 Q. All right. What does that say?

23 A. We were looking at diverting to your
24 handbook. We were going to ask legal if we
25 could divert to your handbook because you had

1 asked if you could have some of your handbook
2 that is in our contract that is not typical to
3 what we do but we decided to talk to legal about
4 that.

5 Q. Prior to negotiations, did Sunbelt give
6 you a copy of the handbook?

7 A. Yes.

8 Q. Did Sunbelt even before the first
9 negotiation session give you copies of its 401K
10 plan?

11 A. Yes.

12 Q. Did Sunbelt give you a copy of its
13 health plan and the summary plan description?

14 A. Yes.

15 MR. WIESE: Objection, your Honor
16 relevance. There aren't any information request
17 allegations in the complaint.

18 JUDGE ROSAS: Hold on. Do you want him
19 to step outside or do you just want to
20 articulate in general the relevance?

21 MS. HILL: Okay. The relevance of this
22 is that the union and the Board have indicated
23 that we did not give any proposals to the union.
24 Part of what we gave them at the very beginning
25 included all the benefits. The handbook, as

1 things came up, for example, the union asked for
2 premiums. In fact, in the July letter that was
3 referenced a few minutes ago for supplemental
4 information from Mr. Ervin, he specifically
5 asked for the newer premium payments. That was
6 submitted in response to Mr. Ervin.

7 MR. WIESE: But there is a difference
8 between proposals being in writing and responses
9 to information requests. They are two
10 completely different items.

11 MS. HILL: But the handbook all the
12 planned descriptions, summary plan, full plan
13 documents were not requested. They were
14 provided to the union because, as Sunbelt
15 indicated, and he can testify, Sunbelt and some
16 of his notes even indicate, Sunbelt wanted to
17 use their own plans for health insurance, 401K.

18 JUDGE ROSAS: Well, I am going to
19 overrule the objection. Oftentimes, and I am
20 not exactly sure how it's all going to factor in
21 here, but oftentimes we have alleged requests
22 for -- failures to provide information requested
23 during bargaining which is pertinent. Here
24 counsel is arguing that there is some points to
25 be made by virtue of the fact that the

1 respondent voluntarily without being requested
2 provided information that was pertinent, it
3 should have been considered in the generation of
4 the collective bargaining agreements so see how
5 it all filters out. Next question.

6 BY MS. HILL:

7 Q. All right. Next question, sir, would
8 you agree that Sunbelt and the union did
9 negotiate whether the bargaining unit employees
10 would be on Sunbelt's 401K or the union's
11 retirement pension plan?

12 A. You guys just declined our proposal
13 every time with no counter.

14 Q. Did we give you the planned document
15 for the 401K?

16 A. Yes.

17 Q. All right. Now I think what you said
18 for Page 9 of 12, this is not your handwriting.
19 Do you recognize it?

20 A. I don't know if it's Greg's but I
21 apologize. It's not mine.

22 Q. Okay. And I apologize. I thought you
23 said early on that all the handwriting on this
24 entire exhibit was yours. All right. So this
25 one I save for Mr. West?

1 A. I don't know. It's not mine. That
2 particular page everything else is mine and
3 that's not my writing.

4 Q. Moving on to 10, those marks are not
5 yours?

6 A. No.

7 Q. Okay. And Page 11, even what you
8 called I think you called it a doodle and all
9 the handwriting is yours on this page?

10 A. That is mine.

11 Q. The handbook that Sunbelt gave to you
12 also the handbook contained Sunbelt's
13 volunteerism policy, correct?

14 A. Yes.

15 Q. The handbook contained the funeral
16 leave policy, correct?

17 A. Yes.

18 Q. The handbook contained the jury duty
19 policy, correct?

20 A. Yes.

21 Q. The handbook included the victims of
22 domestic violence policy, correct?

23 A. Yes.

24 Q. And the Sunbelt handbook also included
25 the time off for voting policies, correct?

1 A. Yes.

2 Q. Okay. Page 12 of 12, are you there,
3 sir?

4 A. Yes.

5 Q. Okay. Handwriting on this document is
6 yours?

7 A. Yes.

8 Q. This was -- this proposal or this
9 document was given to you on June 26th, correct?

10 A. Yes.

11 Q. And the union waited until July 16th to
12 discuss this document with Mr. Ryan?

13 A. Yes. Prior to our July 28th meeting
14 preparing for it.

15 Q. And the suggestion was to add this
16 safety it's what we do as an appendix to the
17 CBA, correct?

18 A. Yes.

19 Q. And did the union make that proposal to
20 Sunbelt?

21 A. I do not know. I wasn't at the next
22 session.

23 Q. Do -- and you have nothing in your
24 affidavit regarding that, correct?

25 A. You are correct because I wasn't at

1 that session.

2 Q. Looking at 7C, sir.

3 A. Okay.

4 Q. Now, this was from the second
5 negotiation session in the month of August,
6 correct?

7 A. Yes.

8 Q. And look at all the pages just to be
9 sure, all the handwriting on this yours?

10 A. Yes.

11 Q. Page 1 of 7, Sunbelt's proposal was
12 TA'd as it stands?

13 A. Yes.

14 Q. And would you agree that this grievance
15 procedure is an important aspect of the
16 Collective Bargaining Agreement between Sunbelt
17 and 139?

18 A. Yes.

19 Q. All right. Page 2 of 7 this is another
20 proposal from Sunbelt on August 30, 2018?

21 A. Yes.

22 Q. And with the one revision it looks like
23 handwritten note last regular workday, is that
24 your handwriting for business?

25 A. Yes.

1 Q. Is that -- that word was part of the
2 TA'd agreement?

3 A. Yes.

4 Q. And would you agree payday language is
5 an important aspect of the agreement between
6 Sunbelt and 139?

7 A. Uh-huh. Yes.

8 Q. Verbal, please.

9 A. Yes. Yes.

10 Q. Page 3 of 7. This, again, was a
11 proposal from or a counterproposal from Sunbelt
12 to the union's initial proposal, correct?

13 A. Yes.

14 Q. And does the bold language highlight
15 the revisions that Sunbelt made to the union's
16 proposals?

17 A. I believe so.

18 Q. And August 30, 2018, the two sides
19 agreed to this, correct?

20 A. Yes.

21 Q. And would you agree that strikes and
22 lockouts is a very important section of any
23 Collective Bargaining Agreement?

24 A. Yes.

25 Q. Now, Pages 4, 5, and it goes on to six

1 appears to be all of Article 18, correct?

2 A. Yes.

3 Q. And this is what I refer to earlier as
4 sort of a catch-all general article for the
5 agreement, correct?

6 A. Yeah.

7 Q. Now, looking at 18.2, did you see 18.2
8 in any contract with the 324 or the 150?

9 A. Yes.

10 Q. Which one?

11 A. I believe it was 324.

12 Q. And what was the dollar amount for
13 that?

14 A. 150 dollar.

15 Q. Was that for the boot allowance or was
16 that for the coupon?

17 A. I believe it was the boot allowance.

18 Q. Okay. So the coupon is a very
19 different thing, correct, from the boot
20 allowance?

21 A. Yeah.

22 Q. Because did the union indicate that
23 some of the members prefer Red Wing boots to
24 what Sunbelt provided on their website?

25 A. I know there was discussion about the

1 kinds of boots. I don't recall. I just know --
2 I do recall that Greg West said that not all our
3 guys like Red Wing. They like various boots.

4 Q. And those boots there was a discussion
5 of how many different boots Sunbelt has on its
6 website, correct?

7 A. Yes.

8 Q. And Sunbelt paid the whole amount based
9 on whatever the employee picked out from the
10 online selection?

11 A. I believe so. I don't recall that.

12 Q. So instead of just giving 150 dollar
13 boot allowance, Sunbelt for this contract was
14 giving the members free boots if they select
15 from online and then a hundred dollar coupon if
16 they wanted to go to Red Wing or in this case
17 you changed it to a store?

18 A. I recall Jamie Smith telling us that
19 the selection that you guys had which you guys
20 would pay for was very minimal and not the
21 greatest.

22 Q. Did Mr. Anderson counter that by
23 listing all the different boots that were online
24 and that if there was a defect in any boot, that
25 Sunbelt would give that employee upon showing

1 the defective boot a new pair of boots?

2 A. I believe he did.

3 Q. So 18.1 was TA'd and does this indicate
4 that 18.2 was TA'd or is that just for 18.3?

5 A. That's for 18.3.

6 Q. Okay. So 18.5 was TA'd on the -- on
7 August 30th?

8 A. Yes.

9 Q. 18.6 was TA'd on August 30th?

10 A. Yes.

11 Q. And the highlighting in 18.6 indicates
12 the revised language from Sunbelt to the union's
13 proposal?

14 A. Yes.

15 Q. Now, looking at 18.10, is that your
16 handwriting for ERT?

17 A. Yes.

18 Q. What -- do you remember the
19 significance of that?

20 A. I'm sorry. I do not.

21 Q. Okay. And for 18.13, did Sunbelt
22 provide an explanation for one of the NLRB
23 rulings that caused Sunbelt to make this
24 proposal?

25 A. I believe so, yes.

1 Q. Let's go to 7 of 7 now, okay. This
2 article it looks as if it was discussed in the
3 afternoon on August 30th; is that correct?

4 A. Yes.

5 Q. 17.2 was that one TA'd?

6 A. Yes.

7 Q. Now, your TA below for 17.5, does that
8 indicate TA for the whole section?

9 A. Nope. Only Section E.

10 Q. 17E. And did the parties discuss 17.7?

11 A. Yes.

12 Q. There was a discussion of 17.6
13 regarding posting electronically all new jobs,
14 correct?

15 A. Yes.

16 Q. Please now pick up 7D as in dog.

17 A. Okay.

18 Q. All right. Is the handwriting on this
19 one yours?

20 A. Yes.

21 Q. Okay. Upper left-hand corner 15
22 Sunbelt, what does that represent?

23 A. As I stated earlier your Article 20 was
24 technically our Article 15.

25 Q. Because some articles were deleted,

1 correct?

2 A. Not full articles. I believe it was
3 just a section of articles.

4 Q. All right. These proposals were made
5 August 30th of 2018?

6 A. Yes.

7 Q. And when were Sections 20.2, 22.1,
8 22.2, TA'd.

9 A. I believe those were on 9/27/18.

10 Q. And then 22.3 was TA'd on December 28,
11 2018?

12 A. Another typo. That was December 10,
13 2018.

14 Q. And, so, okay. 22.4 as of September
15 27th was TA'd, correct?

16 A. Yes.

17 Q. And the deletion of 22.5 was TA'd?

18 A. Yes.

19 Q. Now 22.6 was open as of September 27,
20 2018, correct?

21 A. Yes.

22 Q. You discussed it with Pat Ryan when?

23 A. Before our next session on October 23,
24 2018.

25 Q. And how do you know you discussed it

1 before October 23, 2018?

2 A. Because I tried to always prepare to
3 get the answers before the next session so we
4 were prepared.

5 Q. Okay. But you were given this
6 August 30th?

7 A. Uh-huh.

8 Q. 2018, correct?

9 A. Yes.

10 Q. And why wasn't this discussion before
11 September 27, 2018?

12 A. I don't recall.

13 Q. Thank you. Would you please go to 7E?

14 A. Okay.

15 Q. The handwriting on is this document and
16 it's three pages, is this all yours?

17 A. Yes.

18 Q. Okay. It indicates for 18.11 Sunbelt
19 to print off quiz to look at. And Sunbelt did
20 it, correct?

21 A. Yes.

22 Q. Was 22.6 open?

23 A. 22.6 was TA'd.

24 Q. Okay. Then looking at 2 of 3, you
25 indicate here Sunbelt to massage this language

1 and did Sunbelt do so?

2 A. I don't recall.

3 Q. Well, looking at 3 of 3, is that the
4 revised language based on the union's request?

5 A. Yes.

6 Q. And so ultimately on what on
7 October 23rd at some point Article 24 was TA'd,
8 correct?

9 A. Yes.

10 Q. And would you agree that a drug and
11 alcohol testing program is an important aspect
12 of the agreement between Sunbelt and the 139?

13 A. Yes.

14 Q. To the best of your knowledge, sir, is
15 there any requirement of an employer to
16 negotiate wages before any other part of a
17 Collective Bargaining Agreement?

18 A. No. We do that once everything is on
19 the table.

20 Q. What do you mean once everything is on
21 the table?

22 A. Once everything has been proposed like
23 we proposed it on February 8, 2019.

24 Q. Once it's proposed or once everything
25 else is TA'd?

1 A. Once it's proposed.

2 Q. But to the best of your knowledge,
3 there is no requirement for that. It's just
4 your practice, correct?

5 A. Yeah.

6 Q. All right. If you would look at 2 of 3
7 your handwriting there, discharge discipline,
8 are you saying the second paragraph there would
9 go to 15.1, 15.2?

10 A. I believe so.

11 Q. And was the union's suggested
12 additional language for the next paragraph as
13 long as the policy is consistent for all
14 visitors?

15 A. Yes.

16 Q. And that paragraph and that language
17 from the union was agreed to by Sunbelt,
18 correct?

19 A. I believe so.

20 Q. Okay. If you would please look at 7F,
21 sir.

22 A. 7F.

23 Q. Yes. It's just a one-page front and
24 back?

25 A. Yes, got it.

1 Q. Is the handwriting on this document
2 yours?

3 A. Yes.

4 Q. Would you identify, please, the -- Let
5 me do it this way instead, I'm sorry.
6 Article 17.1, the printed language that you have
7 at the end of the fourth line, is that your --
8 the union's proposal?

9 A. Yes.

10 Q. And that was Sunbelt agreed to it?

11 A. Yes.

12 Q. 17.3 was TA'd on December 10th?

13 A. Yes.

14 Q. Articles 14.7 through 7 those were all
15 deleted, correct?

16 A. Where are you?

17 Q. 17.4 and then there is a dash and a 7
18 do you see that?

19 A. Okay. Yes.

20 Q. And the proposal was to delete it.

21 A. Yes.

22 Q. And that was TA'd, correct?

23 A. Yes.

24 Q. Article 18 was TA'd, correct?

25 A. Yes.

1 Q. 20.1 was TA'd, correct?

2 A. Yes.

3 Q. And it was TA'd with the union's
4 additional language with preapproved PTO,
5 correct?

6 A. Yes.

7 Q. Okay. 20.3, 20.4 were TA'd as
8 proposed, correct?

9 A. Yes.

10 Q. 20.5, the union's proposal was to
11 delete the last sentence?

12 A. Yes.

13 Q. What was TA'd, both sentences 1 and 2?

14 A. I don't recall.

15 Q. 20.7 TA'd because it was already
16 handled in another article?

17 A. Yes.

18 Q. 21.1 was it the union's proposal to
19 delete the last sentence?

20 A. Yes.

21 Q. And was it TA'd with the last sentence
22 deleted?

23 A. Yes.

24 Q. So Sunbelt agreed to the proposal from
25 the union, correct?

1 A. On that one, yes.

2 Q. And would you agree that hours of work
3 is an important article of the Collective
4 Bargaining Agreement between Sunbelt and the
5 union?

6 A. Yes.

7 Q. 21.3, 21.4, 21.5 TA'd on December 10th,
8 2018, correct.

9 A. Yes.

10 Q. 21.6 and 21.7 it appears that there was
11 some discussion about alternative language for
12 those two sections, correct?

13 A. Yes.

14 Q. But as of December 10, 2018, you don't
15 believe it was TA'd, correct?

16 A. Correct.

17 Q. 7H, sir.

18 A. Okay.

19 Q. Okay. This is a three-page document
20 and these were Sunbelt's proposals for
21 September -- excuse me -- February 21, 2019?

22 A. Yes.

23 Q. At some point during negotiations, did
24 Sunbelt present to the union a copy of Sunbelt's
25 accommodation form?

1 A. I don't know.

2 Q. You know, for when an individual has a
3 medical issue and needs to be accommodated?

4 A. I don't recall.

5 Q. Okay. Page 2 of 3. So 13, 15.2, 15.3,
6 15.5 were all TA'd by the parties, correct?

7 A. Yes.

8 Q. 18.1 and you have two TAs for that one.
9 What does that mean?

10 A. I don't recall.

11 Q. Okay. 18.5 Sunbelt's proposal was TA'd
12 for that proposal?

13 A. Yes.

14 Q. 18.6, 18.7 were TA'd. I'm sorry.
15 Going to the third of three.

16 A. Uh-huh.

17 Q. Is that correct?

18 A. Yes.

19 Q. Now, for 19.1 it appears that there was
20 some negotiation because the union proposed 21.1
21 with 15 cents per hour but the parties did not
22 agree to it. At least as of February 21, 2019,
23 correct?

24 A. Yes.

25 Q. 19.3, the parties agreed was Sunbelt's

1 proposal, correct?

2 A. Yes.

3 Q. And you would agree that a proposal
4 regarding lunch period is an important proposal
5 for Collective Bargaining Agreement between
6 Sunbelt and the union, correct?

7 A. Yes.

8 Q. 21.4 that was TA'd?

9 A. Yes.

10 Q. 19.7, that one was TA'd, correct?

11 A. Yes.

12 Q. And this is a proposal that was
13 different from the 324 and the 150, correct?

14 A. I don't recall that.

15 Q. And 20.5, 21.6, 21.7, TA'd because they
16 were addressed in different provisions, correct?

17 A. Yes.

18 MS. HILL: We have been going at it for
19 quite some time, your Honor. Perhaps a short
20 break for the parties to stretch.

21 JUDGE ROSAS: Do you need a break?

22 THE WITNESS: Sure.

23 JUDGE ROSAS: Okay. Let's take five.

24 MS. HILL: Thank you.

25

1 (Whereupon, a short recess was
2 taken.)

3 JUDGE ROSAS: All right. Back on.

4 MS. HILL: All right. First, I do
5 still have a subpoena up for this witness for
6 later in the week so I still reserve the right
7 to ask him for questions based on our case in
8 chief. I am trying to get rid of as much as
9 possible in cross examination. No?

10 JUDGE ROSAS: You subpoenaed him so you
11 are an officer of the court. He has to listen
12 to you.

13 MR. RYAN: Subpoena for Mr. Ervin?

14 MS. HILL: Yes.

15 MR. RYAN: There was a subpoena for
16 documents, not for testimony.

17 MS. HILL: Yeah. There was also for
18 him to present documents and also for him. For
19 the 21st -- hang on. Pause. He has to at least
20 to testify and required to bring --

21 JUDGE ROSAS: Let's -- that's not -- we
22 are not dealing with that right now.

23 MS. HILL: Okay. Sorry, sir.

24 JUDGE ROSAS: That's fine.

25

1 BY MS. HILL:

2 Q. Looking at Respondent's Exhibit 1, the
3 drawing that you made, sir.

4 A. Yes.

5 Q. All right. You made a statement about
6 the union had asked for a room to caucus in,
7 correct?

8 A. Yes.

9 Q. Did the union not want to caucus in the
10 conference room?

11 A. No. Originally on May 22nd, you wanted
12 us to caucus in our cars that's why we asked for
13 a caucus room.

14 Q. No. That isn't my question, sir. Did
15 you ask for a room other than the conference
16 room to caucus in?

17 A. No.

18 Q. And Sunbelt had been using
19 Mr. Anderson's office, the one that you have on
20 that drawing, correct?

21 A. Yes.

22 Q. Okay.

23 JUDGE ROSAS: By the way, does everyone
24 concur with this general drawing?

25 MS. HILL: I was going to ask that.

1 JUDGE ROSAS: That's not to scale but
2 just for the purposes of the configuration of
3 what's located next to what and so on for
4 purposes of reference, any objection?

5 MR. RYAN: No objection.

6 MR. WIESE: I just have a
7 clarification. I guess it would be within the
8 scope of voir dire.

9 VOIR DIRE EXAMINATION

10 BY MR. WIESE:

11 Q. Between -- so do you see where you have
12 SB caucus room in the upper left-hand corner
13 there?

14 A. Yes.

15 Q. Okay. That's where Sunbelt was taking
16 its caucuses?

17 A. Yes.

18 Q. Okay. And then -- and then there
19 appears to be a wall between that and the office
20 below that; is that correct?

21 MS. HILL: Next to it.

22 THE WITNESS: You are referencing where
23 I have written counter? Oh, between.

24 BY MR. WIESE:

25 Q. Yes. So from Sunbelt caucus room if

1 you go directly below that it says office. Do
2 you see that?

3 A. Yes. They are separate.

4 Q. By a wall.

5 A. Yes.

6 Q. And you have been talking about
7 Mr. Anderson's office, is that office as written
8 on the map is that Mr. Anderson's office or do
9 you know whose office that is?

10 A. I don't know whose office that is. I
11 just know that's where they went.

12 Q. Okay. Well, did they go to the area
13 marked SB caucus room or the area marked office?

14 A. No. They always went to the Sunbelt
15 caucus room. I nor we knew who whose office
16 that was. We just knew that's where they
17 caucused.

18 Q. And they those are two separate rooms?

19 A. Yes.

20 MR. WIESE: With the understanding that
21 the map isn't to scale, General Counsel has no
22 objection.

23 JUDGE ROSAS: Okay. So Respondent's 1
24 is in evidence. Go ahead.

25 (Respondent's 1 received.)

1 CROSS EXAMINATION (resumed)

2 BY MS. HILL:

3 Q. You testified on direct examination
4 that you had looked into what you have marked as
5 a Sunbelt caucus room and saw someone on his
6 phone?

7 A. Wrong. I looked out our door and could
8 see someone on their phone in the general area
9 by the counter. I did not say that I looked in
10 your conference room.

11 Q. Okay. Because there is a window on
12 that for that office, correct?

13 A. When I went to that office, I just
14 knocked on the door. I didn't look in to give
15 you your privacy.

16 Q. Okay. With respect to Mr. Mayfield,
17 where was he when you saw him with some people
18 who you thought were vendors?

19 A. By the counter. If you look -- if you
20 look at the diagram that I have there --

21 Q. Yes, sir.

22 A. -- on the bottom right-hand side in the
23 conference room I was the third X. I could see
24 directly out that door at an angle to the
25 counter and that's where I seen him.

1 JUDGE ROSAS: Sir, I am going to give
2 you a defining instruction now so counsel know I
3 am not picking on witnesses down the line. This
4 is what I do with everybody, okay, when the
5 question kind of goes on for a while, counsel is
6 asking you questions that literally when they
7 literally seek to elicit a yes or no, that's
8 what I am expecting you to give. Anything
9 beyond that is technically subject to being
10 stricken.

11 Let her ask you the questions. If you
12 don't like the way the question is supposed,
13 counsel on your side perhaps may rephrase it
14 when it's their turn. Okay? But I am giving
15 you that instruction at this time to kind of
16 moving things along because maybe you are giving
17 counsel what she doesn't want to hear and what
18 she is looking for. She will ask you the next
19 question. You don't have to help anybody here,
20 okay. Go ahead, Counsel.

21 THE WITNESS: Yes, sir.

22 BY MS. HILL:

23 Q. You already testified that you saw
24 Mr. Mayfield at the counter, correct?

25 A. Yes.

1 Q. You saw him talking to some people?

2 A. Uh-huh.

3 Q. Verbal, please.

4 A. Yes.

5 Q. Were they on the right or left side of
6 the counter looking at your diagram?

7 A. They would have been on the right-hand
8 side between the counter and the shelving tools
9 that are there.

10 Q. And you didn't recognize him?

11 A. The individuals, no.

12 Q. So you were just speculating that they
13 were vendors?

14 A. Yeah. Yes.

15 Q. Thank you. You testified that
16 Mr. McGowan attended two sessions that you
17 attended, correct?

18 A. Yes.

19 Q. Do you recall Mr. McGowan stating that
20 he would not agree to Sunbelt's proposals until
21 they had been verified?

22 A. Please rephrase. I'm sorry. I don't
23 understand.

24 Q. Would you -- do you recall Mr. McGowan
25 in response to some proposals from Sunbelt

1 stating that he would not agree to them until he
2 had verified them and then he also said, you
3 know, trust that they are accurate but verified.
4 Do you recall that?

5 A. I don't recall that.

6 Q. Oh, and with respect to Mr. Mayfield's
7 alleged conversation with some individuals on
8 the right side of the counter, you never heard
9 what the conversation was?

10 A. No.

11 Q. Do you recall for the December
12 negotiation session Mr. West saying that he had
13 another obligation to attend to that day?

14 A. I think I do.

15 Q. And do you recall if that was a funeral
16 he had to attend to?

17 A. No. That was the day of our Christmas
18 union meeting.

19 Q. And he asked to leave early, correct?

20 A. I don't recall if it was that day or a
21 different day because Greg West missed the
22 meeting and he was at a different funeral a
23 different day.

24 Q. Okay. It wasn't the December 10, 2018
25 meeting at about 12:25 and he said he had to

1 leave for a funeral?

2 A. I don't believe so.

3 Q. And for Exhibit 12, General Counsel's
4 Exhibit 12, you did not write any of the
5 handwriting on this, correct?

6 A. No.

7 Q. Looking at Exhibit 13, sir --

8 A. Yes.

9 Q. -- now, this E-mail was sent after the
10 conclusion of the negotiations on July 9th,
11 correct?

12 A. Yes.

13 Q. This was -- the attachment was the
14 document that you were supposed to send to me
15 between the last negotiation and before
16 July 9th, correct?

17 MR. WIESE: Objection. Asked and
18 answered.

19 JUDGE ROSAS: Sustained.

20 BY MS. HILL:

21 Q. Exhibit 15, do you have that?

22 A. Yes.

23 Q. Okay. Do you recall any of the
24 discussion with Sunbelt regarding the ground
25 rules document?

1 A. Yes. You had stated that No. 3, the
2 name was wrong and we stated that we would
3 change that.

4 Q. Did Sunbelt also object to being
5 limited to 20 minutes for caucuses?

6 A. Yes.

7 Q. And did they give a reason why?

8 A. Nope.

9 Q. Did they explain if any proposals had
10 to be prepared that it may take longer than
11 20 minutes?

12 A. Yes.

13 Q. Negotiation session should average
14 around two hours or not to exceed three hours.
15 Did Sunbelt also object to that because it
16 wanted longer negotiation sessions?

17 A. I don't recall. I just for the most
18 part recall you guys rejecting it in its
19 entirety.

20 Q. Did Sunbelt -- so in response to that
21 you say no, you don't remember that, correct?

22 A. Correct.

23 Q. Did Sunbelt in response to this ground
24 rules document Exhibit 15 inform you that the
25 Local 150 and Local 324 for all of the 324

1 contracts had never ever seen a ground rules
2 document?

3 A. I believe so.

4 Q. During one of the times that you had --
5 during one of the negotiation sessions were you
6 told when that -- when the union was finished
7 with its caucus to let Sunbelt's negotiating
8 team know?

9 A. Yes.

10 Q. And did you contact one of the
11 individuals -- one of the Sunbelt employees
12 working at the counter that the union was ready?

13 A. Yeah or I went to your room to let you
14 know.

15 Q. Okay. But do you recall the time when
16 you went to one of the people at the counter?

17 A. Yes, I do.

18 Q. And were you later informed that the
19 negotiating team for Sunbelt had not been
20 informed by the counter person that the union
21 was ready?

22 A. I believe so.

23 Q. Did Sunbelt apologize for the lack of
24 knowledge that the union was ready?

25 A. Yes.

1 Q. Now, in addition to seeing Mr. Bogardus
2 on his telephone, did you also testify you saw
3 him on his computer?

4 A. At a different session, yes.

5 Q. Okay. And do you know what he was
6 doing?

7 A. No.

8 Q. Did you ask him what he was doing?

9 A. Nope.

10 Q. Did you raise an objection during the
11 negotiation session subsequent to seeing him
12 working on the computer that you thought it was
13 a waste of time?

14 A. I believe Greg West raised the concern.

15 Q. Specifically about Mr. Bogardus?

16 A. I don't recall which of the three
17 times, but it was one of the times, yes.

18 Q. Okay. You mentioned Mr. Mariano Rivera
19 being transferred. Do you know when he
20 requested the transfer?

21 A. No. The bargaining unit employees that
22 were there before we got laid off said that I
23 believe August 8th was to be his last day but he
24 got hurt on August 7th the night before.

25 Q. Okay. But the bargaining unit members

1 didn't tell you when he requested the transfer,
2 correct?

3 A. No.

4 Q. Did you ask Mr. Rivera when he
5 requested the transfer?

6 A. No.

7 Q. And why not?

8 A. Because he didn't want to talk to us
9 anymore.

10 Q. Did he tell you that?

11 A. Yeah, he did.

12 Q. And when was that?

13 A. I apologize. He told the bargaining
14 unit members that right around the time that he
15 filed the D cert.

16 Q. Okay. So we are talking about hearsay.
17 All right. With respect to your statement that
18 Mr. McKellips and Mr. Romanowski were terminated
19 on August 8th, they were laid off, correct?

20 A. Yeah. I don't remember saying
21 terminated. I said laid off.

22 Q. I just want to make sure that the
23 record is clear and they had rehire privileges,
24 correct?

25 A. Yes.

1 Q. Oh, what is your definition of small
2 tool?

3 A. Small tool is anything that you don't
4 need to pull with a trailer. Like the way
5 Mr. Mayfield described it was I believe he said
6 stuff that they would -- the customers would
7 pull off the shelf to rent so I guess I would
8 say your small pumps, drills, saws, stuff like
9 that that could be on the shelf in that area
10 that you see that I have drawn out.

11 Q. Okay. Did Mr. Mayfield refer to it as
12 small equipment?

13 A. Nope. No, he did not.

14 Q. Did he describe it as Sunbelt rental
15 equipment that was 10,000 pounds or less?

16 A. No.

17 Q. Did he say that -- did he give any
18 examples as best you can recall what type of
19 equipment?

20 A. No.

21 Q. Did the union negotiate what would
22 happen to Sunbelt's equipment that was in the
23 yard?

24 A. I don't believe so.

25 Q. And why not?

1 A. That's Sunbelt's business not ours.

2 Q. Did the union ask questions whether the
3 equipment -- the big equipment would be moved
4 out of Sunbelt's yard?

5 A. I don't recall.

6 Q. You mentioned that there was a cut I
7 think it was -- that was your word in the video?

8 A. Yes.

9 Q. Video No. 2?

10 A. Uh-huh.

11 Q. Could you give me the definition of
12 cut?

13 A. There was four videos to that and the
14 two videos in between were just the driver
15 driving around stopping and driving around and
16 stopping so nothing was relevant there. I was
17 just following him driving around as he was
18 circling and trying to either play games or lose
19 me.

20 Q. Did you ask the driver of that truck
21 what he was doing?

22 A. No.

23 Q. Did you have any conversation with that
24 person?

25 A. No.

1 Q. Do you know if when Sunbelt had drivers
2 at the Franksville location whether Sunbelt also
3 used outside haulers?

4 A. I was told by the drivers only in an
5 overflow situation when the drivers couldn't
6 handle the loads or were too busy.

7 Q. And which drivers are you referring to?

8 A. Jamie Smith, Mark Richter, and Troy
9 Scholz.

10 Q. Now, Mark Richter was on a medical
11 leave of absence. Don't describe anything
12 regarding that for the purposes of this hearing,
13 but he had not been at the profit center for
14 over a year during the negotiations, correct?

15 A. I was -- he told me that he was there
16 the previous fall so that would have been --

17 Q. Fall of 2017?

18 A. Yes. Six months prior to the election.
19 Five, six months.

20 Q. And Troy, when did Troy work there?

21 A. Troy worked there until he was
22 terminated in September of '18.

23 Q. Now the skid-steer that you referred to
24 as 8,000 pounds, correct?

25 A. Ball park, yes.

1 Q. So that's something that could be towed
2 on the back of an F150 on up?

3 A. That's not with the trailer, no. Not
4 an F150, maybe a 250.

5 Q. 250?

6 A. Sure.

7 Q. Mr. Mayfield's position as regional
8 vice president, do you know how many locations
9 he covers?

10 A. No.

11 Q. Did the 324 tell you how many contracts
12 they were negotiating with him?

13 A. Yeah. They have done business with him
14 but he came on just before there was an
15 individual I think by the name of Brian.

16 Q. Albert?

17 A. Yes. Albrect -- Albrecht prior to
18 Jason that held that title. They dealt with him
19 and then Jason took over for him.

20 Q. Okay. Did the 324 tell you that or the
21 150?

22 A. I know 150 did for sure. I thought 324
23 said the same.

24 Q. Okay. Do you know how many states
25 Mr. Mayfield covers?

1 A. I do not.

2 Q. And I am looking if you want to look, I
3 guess I am suppose to give copies of this to the
4 judge and to the witness.

5 JUDGE ROSAS: On cross you don't have
6 to worry about it at this time. Just show
7 counsel what you are showing the witness.

8 MS. HILL: Okay. All right. Let's go
9 back.

10 JUDGE ROSAS: We can make copies later.

11 MS. HILL: Are you okay?

12 MR. WIESE: Yeah. I gave you all my
13 copies. I'd appreciate if you have an extra one
14 floating around so I can follow.

15 MS. HILL: Pass it down to Mr. Ryan,
16 please, unless he has one.

17 MR. RYAN: I probably have it.

18 MS. HILL: Okay.

19 BY MS. HILL:

20 Q. And it's my understanding this is your
21 first one and there is a supplement to this one;
22 is that correct.

23 JUDGE ROSAS: These are Jencks
24 affidavits?

25 MS. HILL: Yes.

1 JUDGE ROSAS: Oh, I don't see those.

2 Unless there is a reason to.

3 BY MS. HILL:

4 Q. Looking at your Page 5, I believe this
5 is for Paragraph 14.

6 A. Yes.

7 Q. Okay. I believe you were asked about
8 part of this -- tell me if I am wrong, Mr. Wiese
9 -- about part of this paragraph on direct
10 examination. Did you ever ask Sunbelt why they
11 made the proposals that they did?

12 A. Verbally or what do you mean?

13 Q. You with respect to this particular
14 paragraph, this session?

15 A. Greg West just always asked you guys to
16 put it in writing because you had proposed some
17 of the proposals verbally and Greg asked if you
18 would please put it in writing.

19 Q. Okay. Looking at this particular
20 paragraph it talks about the first proposal
21 presented by the employer presented for this
22 particular session was a PTO and the union
23 attempted to go through its proposals in the
24 order we had them in our package proposed --

25 MR. WIESE: Objection, your Honor. I

1 mean, counsel is just reading the affidavit into
2 the record.

3 MS. HILL: Well --

4 JUDGE ROSAS: Why don't you establish
5 what he previously testified to and what you are
6 trying to impeach him with now?

7 BY MS. HILL:

8 Q. It's based on my notes, and I
9 apologize, but it appears that you were saying
10 that Sunbelt was going back and forth and
11 Sunbelt you claim Sunbelt was too busy for
12 certain dates?

13 A. Yes.

14 Q. So back and forth meaning on its
15 proposal?

16 A. Back and forth meaning that we wanted
17 to go through the Proposal 1, 2, 3 in
18 consecutive order and you would jump around and
19 go to 4, go to 12, go to whatever, making it
20 slower and making it more confusing.

21 Q. The subsections for the proposal?

22 A. Yes.

23 Q. Was Sunbelt trying to explain or
24 justify its proposal?

25 A. I don't know.

1 Q. Oh. Okay. Now go to Page 8 and this
2 is where you were asked questions on direct
3 between Line 1 and Line -- Line 16?

4 A. 1 through 16.

5 Q. Correct. You were asked questions
6 about it?

7 A. Uh-huh.

8 Q. All right. We have already gone over
9 what you saw going on with Mr. Mayfield talking
10 to people but this also appears to say that you
11 saw Mr. Ryan Mayfield taking calls.

12 A. No. That's Brian Anderson.

13 Q. Well, it says, During the -- Let's see,
14 we noticed that during some of the caucus breaks
15 that day, regional vice president Jason Mayfield
16 and profit center manager Brian Anderson were on
17 the phone apparently taking calls and doing
18 day-to-day business as opposed to discussing and
19 formulating bargaining proposals.

20 So are you saying Mr. Mayfield and
21 Mr. Anderson were on the phone?

22 A. I believe so.

23 Q. And what is the -- I mean, how do you
24 know what they were discussing on the phone?

25 A. I don't.

1 Q. So you are just guessing or speculating
2 that they were not getting information to
3 formulate bargaining proposals?

4 A. Yeah.

5 Q. All right. Who had ultimate
6 authority -- Who were you told had ultimate
7 authority to bind Sunbelt with respect to
8 negotiations?

9 A. I'm sorry. To what?

10 Q. Who on Sunbelt's negotiation team had
11 the ultimate authority to bind Sunbelt?

12 A. To mind?

13 Q. Bind. I'm sorry.

14 A. Oh, bind. Okay. Jason Mayfield I
15 believe.

16 Q. Now, there is -- I apologize. It's one
17 of these. Perhaps Mr. Wiese can help. The
18 one -- the E-mail regarding fleet issues.

19 MR. WIESE: I believe that's General
20 Counsel Exhibit 9.

21 BY MS. HILL:

22 Q. Thank you. If you would pull that one
23 up.

24 MR. WIESE: That is the correct
25 E-mail.

1 THE WITNESS: 9. Got it.

2 BY MS. HILL:

3 Q. Okay. This one I believe has to do
4 with Mr. Bogardus, correct? He had a conflict.
5 He had an adoption hearing?

6 A. This one this one looks like when he
7 had to cancel November 13th.

8 Q. Due to Mr. Bogardus -- oh, I am looking
9 at the wrong one, I apologize. No. I am on 9.
10 Okay. This one has to do with fleet issues.

11 A. Right.

12 Q. Did you ask anyone what the fleet
13 issues were?

14 A. No.

15 Q. But you assumed that there were other
16 reasons for cancelling?

17 A. You didn't give us any other reasons
18 besides that.

19 Q. Did you believe -- Did the union
20 speculate that it was because of another NLRB
21 election?

22 A. No. We had stated that we wished you
23 could have met a week later on November 20th
24 because that other Sunbelt election was finished
25 at 7:00 a.m.

1 Q. But did -- I'm sorry. But are you
2 saying that the union told Sunbelt that the
3 parties should have met on November 20th after
4 the union election at the Climate Control
5 facility?

6 A. We didn't tell you that, no.

7 Q. Now, does Mr. Mayfield have any
8 responsibilities with respect to Climate
9 Control?

10 A. Nope.

11 Q. And at that time did Mr. Bogardus have
12 any responsibilities with respect to Climate
13 Control?

14 A. No.

15 Q. Did Mr. Anderson have any
16 responsibilities with respect to Climate Control
17 at that time?

18 A. Nope.

19 Q. So are you saying that the fleet issues
20 were actually because of the election?

21 A. Yeah. We believe so. But we never
22 speculated that to you. We never told you guys
23 that.

24 Q. You just speculated to yourself?

25 A. Uh-huh. Yes.

1 Q. Even on the first day of negotiations,
2 the parties agreed to at least one proposal,
3 correct?

4 A. Yes.

5 Q. For the negotiations on June 26, 2018,
6 did the union state that it wanted to take a
7 closer look at Sunbelt's paid time off policy?

8 A. I believe so.

9 Q. During that same negotiation session,
10 did the union discuss the funeral leave policy
11 that Sunbelt has with respect to who is covered,
12 which family member is covered for purposes of
13 being able to take funeral leave?

14 A. Yes. I believe so.

15 Q. And did the union ultimately decide
16 that its attorneys had to look at Sunbelt's
17 proposals for management rights, just cause, and
18 paid time off and this is just for that
19 particular the June 26th negotiation?

20 A. Yes.

21 JUDGE ROSAS: Ms. Hill, are you going
22 on to another area at this time?

23 MS. HILL: No, sir.

24 JUDGE ROSAS: Are you in the same area?
25 Why don't you tell me when you are finished with

1 that area that you are working on.

2 MS. HILL: Okay. All right. Just --

3 JUDGE ROSAS: Before you go on to a
4 different idea.

5 MS. HILL: Okay. It's going to be a
6 different negotiation session, is that okay or
7 do you want to take --

8 JUDGE ROSAS: Same concept, right?

9 MS. HILL: Same concept, yes, sir.

10 BY MS. HILL:

11 Q. And then it was August 8th of 2018 when
12 near the very end of the negotiation session
13 that the union had agreed to the management
14 rights proposal and the original proposal for
15 paid time off, correct?

16 A. I was not there.

17 Q. You were on vacation then, right?

18 A. No. I wasn't on vacation. I was doing
19 something else.

20 Q. Then apparently some of the other
21 people at the table said something differently
22 regarding where you were.

23 A. Sure.

24 Q. Oh, you mentioned that for the
25 September 27, 2018 negotiations you were there

1 along with Mr. Buffalo, correct?

2 A. Yes.

3 Q. But Mr. Anderson was not there,
4 correct?

5 A. Yes. Correct.

6 Q. Because he was on paternity leave,
7 correct?

8 A. I don't know why.

9 Q. Okay. And Jason ultimately was not
10 there at negotiations, correct?

11 A. You said he was running late. We
12 started 40 minutes late and he never showed up.

13 Q. And Sunbelt gave you a reason for it,
14 correct?

15 A. Yes, you did.

16 Q. And it was?

17 A. Just stuck in traffic and wasn't going
18 to make it.

19 Q. Was he trying to get to Franksville
20 during an acquisition meeting?

21 A. I don't recall that. I just remember
22 you always stating when Mr. Mayfield was late
23 that it was due to traffic usually.

24 Q. Usually but not always. You mentioned
25 in direct examination that the union withdrew

1 its proposal regarding the national training
2 contribution, correct?

3 A. Yes.

4 Q. Did Mr. Mayfield provide you with an
5 explanation as to what kind of training Sunbelt
6 provides either directly from Sunbelt or through
7 Sunbelt's vendors?

8 A. Yes.

9 Q. Did it also discuss with you that the
10 members could be eligible for vocational school
11 scholarship?

12 A. I believe so.

13 Q. So Sunbelt did provide other avenues
14 for training for the bargaining unit members,
15 correct?

16 A. Yes.

17 Q. Did Sunbelt also make a proposal
18 regarding shipments of personal items directly
19 to the profit center that it was going to
20 prohibit bargaining unit members from doing
21 that?

22 A. Yeah.

23 Q. And do you recall what the reason was
24 for that?

25 A. So they are not deemed liable for any

1 damage to the product.

2 Q. Did it -- was it also because did
3 Sunbelt give you the example of one of the
4 bargaining unit members having fish -- for his
5 fish business being delivered directly to the
6 profit center?

7 A. I know Jamie Smith did have a fish
8 business. I don't recall that discussion.

9 Q. Also do you recall after that short
10 negotiation session in July of 2019 that
11 involved in part the union's failure to provide
12 Sunbelt with electronic version of that document
13 that you apologized to Sunbelt for forgetting to
14 do that?

15 A. Yes, I did.

16 Q. Thank you. February 21, 2019, you
17 provided the safety moment, correct?

18 A. I know for sure I did it on August 8th.
19 I know there was another session that you guys
20 had asked us to do so I did another one. I
21 don't remember if it was that date or not.

22 Q. Was that the date involving when you
23 said that last week one of your members was
24 killed, highway work was reduced to 60 miles per
25 hour and people go too fast.

1 A. That sounds accurate.

2 Q. So do you agree that safety moments can
3 be beneficial to in this case it was only to the
4 bargaining unit members, correct, bargaining
5 team?

6 A. Yeah.

7 Q. Are you aware that Sunbelt or do you
8 remember Sunbelt offered the two mechanics
9 Mr. McKellips and Mr. Romanowski assistance in
10 looking for other posted jobs within Sunbelt?

11 A. I don't recall that. I recall Jason
12 Mayfield saying something other than that.

13 Q. All right. Do you recall any
14 discussion about providing the union members
15 with a reference letter?

16 A. Yes. I do recall that.

17 Q. And did the parties -- did Sunbelt
18 explain how references were provided to
19 employees for former employees?

20 A. I believe so.

21 Q. Okay. And was there any additional
22 information that the union wanted Sunbelt to
23 provide with respect to references for these two
24 individuals?

25 A. Where they can transfer to.

1 Q. Did you ask for a list of open
2 positions?

3 A. I would online while we were in a
4 caucus and informed you guys that there were job
5 openings and those job openings Jason Mayfield
6 stated they weren't qualified for even though
7 the same one Mariano Rivera was in the same
8 position as those other two guys was transferred
9 to one of those locations.

10 Q. Okay. And which position are you
11 referring to?

12 A. The HVAC.

13 Q. Okay. And which of the two individuals
14 had the certifications?

15 A. I don't know.

16 Q. Do you know if Mr. Mariano Rivera had
17 the certifications for the HVAC?

18 A. No. I don't know.

19 Q. Do you know whether Mr. Rivera applied
20 for that HVAC position?

21 A. No. I don't.

22 Q. Do you know how many years of
23 experience Mr. Rivera had in HVAC?

24 A. No.

25 Q. Do you know how much experience Mr.

1 Romanowski or Mr. McKellips had in HVAC?

2 A. No.

3 MS. HILL: You Honor, I think at this
4 time I think that's the end of my cross
5 examination but I reserve the right, No. 1, if
6 they ask follow-up questions and, No. 2, to be
7 able to ask him.

8 JUDGE ROSAS: You think that's the end
9 of your cross examination at this point subject
10 to -- I'll give you some leeway on any other
11 additional questions you might have before we
12 resume tomorrow.

13 MS. HILL: Do you want me to try to be
14 able to ask him additional questions that I was
15 going to be asking later on in the week?

16 JUDGE ROSAS: That's up to you.

17 MS. HILL: Okay. Because I tried to
18 stay within --

19 JUDGE ROSAS: You can. We will talk
20 about it.

21 MS. HILL: I don't want to go beyond
22 the scope.

23 JUDGE ROSAS: You'll make that
24 application. If that's what you should choose
25 to do, and I'll hear from General Counsel and

1 the Charging Party. Generally I don't have a
2 problem with it; but, in theory, there might be
3 some -- maybe there is a time constraint. Maybe
4 you got witnesses. Maybe there is -- sometimes
5 there might be some confusion although that
6 should not happen, right, in one of these cases
7 but -- in terms of the proof. I don't know, but
8 it's very possible you can proceed in that
9 fashion tomorrow morning. So we'll pick up with
10 where you want to go. Great. If not, we'll
11 then go to redirect.

12 MS. HILL: Thank you very much.

13 JUDGE ROSAS: Off the record.

14 (Proceedings adjourned at 5:18 p.m.)
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1 CERTIFICATE

2
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4
5 This is to certify that the attached
6 proceedings before the National Labor Relations
7 Board (NLRB), Region 18 - Subregion 30, in the
8 matter of SUNBELT RENTALS, INC., Case Nos.
9 18-CA-236643 and 18-CA-238989, in Milwaukee,
10 Wisconsin, on December 16, 2019, was held
11 according to the record, and that this is the
12 original, complete, and true and accurate
13 transcript that has been compared to the
14 recording, at the hearing, that the exhibits are
15 complete and no exhibits received in evidence or
16 in the rejected exhibit files are missing.

17 

18 PAULA ERICKSON, CSR, RPR

19 License No. 084-003899
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**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**Case No.: 18-CA-236643
18-CA-238989
18-CA-247528**

SUNBELT RENTALS, INC.

Respondent

And

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 139,
AFL-CIO**

Charging Party

**Place: Milwaukee, WI
Date: 12/17/19
Pages: 251-568
Volume: 2**

OFFICIAL REPORTERS

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18 - SUBREGION 30

In the Matter of:)
SUNBELT RENTALS, INC.,)
Respondent,)
and)
INTERNATIONAL UNION OF) Cases 18-CA-236643
OPERATING ENGINEERS LOCAL 139) 18-CA-238989
AFL-CIO,) 18-CA-247528
Charging Party.)

The above-entitled matter came on for
hearing pursuant to notice, before
ADMINISTRATIVE LAW JUDGE MICHAEL ROSAS, at
310 West Wisconsin Avenue, Suite 450W,
Milwaukee, Wisconsin, on Tuesday, December 17,
2019, at 8:18 a.m.

A P P E A R A N C E S

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471

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507 547 514

(resumed) 520

E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

GCX 5A	288	292
GCX 5B	293	296
GCX 5C	293	296
GCX 5D	293	296
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P R O C E E D I N G S

(Time Noted: 8:18 a.m.)

JUDGE ROSAS: Play ball.

MS. HILL: Thank you.

CONT'D CROSS EXAMINATION

BY MS. HILL:

Q. Mr. Ervin, you are still under oath,
sir.

A. Yes, ma'am.

Q. All right. You mentioned yesterday
that there was only one time when the conference
room did not have adequate heat you believe for
the bargaining team, correct?

A. Yes.

Q. Was it so cold that you could see your
breath?

A. It was close to that, yeah, yeah.

Q. But could you see your breath, sir?

A. I don't recall.

Q. Since -- Could you please define what
is the shop area for Sunbelt's Franksville
profit center?

A. The shop area would be where they work
on equipment. I have never been in the shop,
though.

1 Q. Okay. So when you say work on
2 equipment meaning the bargaining unit mechanics,
3 correct?

4 A. Yes, ma'am.

5 Q. All right. There is an allegation in
6 the complaint that since on or about August 29,
7 2018 Sunbelt's bargaining team members performed
8 work in the shop. When did that occur, sir?

9 A. I have some pictures but another
10 witness has more pictures.

11 Q. And who is that witness?

12 A. Dan Marsolek.

13 Q. And this was during the bargaining?

14 A. Not during the bargaining, no.

15 Q. Okay. And these were bargaining team
16 members meaning Mr. Bogardus, Mr. Anderson and
17 Mr. Mayfield or yours truly were performing work
18 in the shop?

19 A. No. Not the bargaining team.

20 Q. So who do you have photographs of?

21 A. I do not. Not -- I have photographs of
22 people from across the street, but I don't have
23 the in-depth photographs that someone else does.

24 Q. Okay. People from across the street,
25 what do you mean?

1 A. I can see people in there doing stuff
2 that were non-bargaining unit members. I
3 couldn't see who they were. Explicitly but,
4 again, someone else has better pictures.

5 Q. All right. And when you are talking
6 about pictures, are you talking about you were
7 able to take photographs through one of the bays
8 that led into the shop area for the mechanics?

9 A. I am referencing when I was outside on
10 the road. I am not talking about being inside
11 the shop.

12 Q. Okay. Not that you were inside the
13 shop but were your photographs of the inside the
14 shop?

15 A. From the outside.

16 Q. Okay. And did you produce those?

17 A. I don't recall.

18 MS. HILL: I apologize, your Honor. I
19 was just double checking because I don't
20 remember seeing any photographs in the
21 production.

22 BY MS. HILL:

23 Q. Okay. Thank you. But at least during
24 bargaining sessions, you did not see any of the
25 bargaining team members performing work in the

1 shop, correct?

2 A. Correct.

3 Q. Did Sunbelt provide the union
4 negotiating team with a copy of the Take 10?

5 A. I believe so.

6 Q. And could you describe for the judge
7 what the Take 10 is?

8 A. I believe it's taking ten minutes of
9 time to go over safety to make sure that
10 everybody is cognitive of what safety hazards
11 could be out there to be concerned of.

12 Q. And did Sunbelt give that to the union
13 negotiating team in an effort for the union to
14 understand some of the job requirements of the
15 bargaining team members, excuse me, of the
16 bargaining unit members?

17 A. I believe so.

18 Q. Did the union find it objectionable to
19 receive a copy of the Take 10?

20 A. No.

21 Q. Did Gary -- and Gary Stamm worked in
22 the office next to the room Sunbelt used for
23 caucuses, correct?

24 A. I don't know that.

25 Q. Do you know who typed Sunbelt's

1 proposals to the union?

2 A. You said you did.

3 Q. Did you ever ask me how fast I could
4 type?

5 A. No.

6 Q. Did anyone from the bargaining union's
7 bargaining team ask me that?

8 A. No.

9 Q. Do you know that -- Are you aware that
10 Chris Pender allegedly told employees on or
11 about December of 2018 or January of 2019 that
12 the union was not going to get in?

13 A. Yes.

14 Q. And how do you know that, sir?

15 A. One of the bargaining unit members told
16 me.

17 Q. Who?

18 MR. WIESE: Objection, your Honor.

19 JUDGE ROSAS: Try it another way.

20 BY MS. HILL:

21 Q. So how did you learn about Mr. Pender
22 allegedly telling I assume bargaining unit
23 members that the union was not going to get in?

24 A. A bargaining unit member told me.

25 Q. And do you -- and is that bargaining

1 unit member a former employee of Sunbelt?

2 A. He is now.

3 Q. Was he terminated or laid off?

4 A. I believe terminated.

5 Q. And why are you reluctant to provide me
6 with the name of the individual?

7 MR. WIESE: Objection, your Honor.

8 MS. HILL: May I have the basis for the
9 objection?

10 JUDGE ROSAS: Section 7 protected
11 "chill" activity whether he is or she is or is
12 not still an employee. I mean, the downside is
13 he doesn't have corroboration for the hearsay,
14 but you know.

15 MS. HILL: Correct.

16 JUDGE ROSAS: That's the way the cake
17 is baked here.

18 MS. HILL: Right, but that's why I laid
19 the foundation for former employee, terminated
20 versus laid off.

21 JUDGE ROSAS: It applies to current and
22 former. It implies to current and former.
23 Never say never as far as a former employee
24 might come back. I don't know. I am not going
25 to give you the rationales over the years but --

1 MS. HILL: Well, I understand the
2 rationale, sir, but --

3 BY MS. HILL:

4 Q. Did you see a termination employee
5 separation notice, sir?

6 A. No.

7 Q. And did you also learn from the same
8 terminated employee that Mr. Chris Pender said
9 on or about December of 2018 or January of 2019
10 that the union was not going to happen?

11 MR. WIESE: Objection, your Honor. The
12 same objection. I mean, she is just trying
13 to --

14 JUDGE ROSAS: Repeat the question.

15 BY MS. HILL:

16 Q. Yeah. Did the same terminated employee
17 form you -- this is a different question from
18 the first one. The first one I asked that the
19 union was not going to get in. They had a
20 compound allegation. Okay.

21 JUDGE ROSAS: So counsel's question
22 phrases it in terms of an unidentified employee.
23 What's your objection?

24 MR. WIESE: That, I mean, the impact on
25 employees' Section 7 rights and their ability to

1 participate in board investigations. I mean,
2 this is how --

3 JUDGE ROSAS: But there is an
4 allegation.

5 MR. WIESE: There is an allegation, I
6 mean, and the testimony is going --

7 JUDGE ROSAS: So in that effect,
8 counsel has asked the witness what the basis is
9 for that allegation. The witness has
10 articulated that but not revealed the source of
11 his information, right?

12 MR. WIESE: Right but these
13 questions --

14 JUDGE ROSAS: So counsel is entitled to
15 beat the horse -- beat the bush a couple of
16 times on this but you can't get the information
17 at least from him that way.

18 MS. HILL: I understand. That wasn't
19 my question.

20 JUDGE ROSAS: Good. So it's overruled.
21 So he can answer.

22 BY MS. HILL:

23 Q. All right. Thank you. Let me finish
24 the question. You probably got lost in all the
25 legalese there, but anyway, were you informed by

1 someone that on or about December 28 -- 2018 or
2 January 2019 that Chris Pender told an employee
3 that the union was not going to happen?

4 A. Yes, I believe so.

5 Q. And was this information provided to
6 you by the same terminated employee who you
7 referenced for the earlier question regarding
8 feudal for them to select the union?

9 A. Yes.

10 Q. And when did you receive that
11 information, sir?

12 A. I don't recall. It was a long time
13 ago. I don't recall. During the process of
14 negotiations in between.

15 Q. In between negotiation sessions you are
16 saying?

17 A. Throughout the year and a half that we
18 have been negotiating, yes.

19 Q. Okay. So obviously you were told
20 because the allegation is December of 2018 or
21 January of 2019 that it occurred, the
22 information was provided to you after that
23 period of time?

24 A. Yes.

25 Q. And before August of 2019, correct?

1 A. Yes.

2 Q. Thank you. Did you know that on or
3 about December 2018 or January 2019 that Chris
4 Pender threatened its employees that it would be
5 feudal for them to select the union as their
6 bargaining representative?

7 A. Yes.

8 Q. And how did you learn about that
9 allegation?

10 A. I was informed by a bargaining unit
11 member.

12 Q. And was it the same terminated employee
13 who you referenced a few minutes ago?

14 A. I don't recall. There was more than
15 one person that were saying various things in
16 reference to Chris Pender.

17 Q. All right. Did I just cover all of
18 the, as you call it, various things about Chris
19 Pender that you know about?

20 A. I believe so.

21 Q. Now, just for the Judge's purpose, what
22 position did Mr. Pender have in on or about
23 December 2018 or January of 2019?

24 MR. WIESE: Objection. Your Honor,
25 this is part of the stipulation. I mean, we

1 have stipulated his position.

2 JUDGE ROSAS: I'll take it. I'll take
3 it.

4 THE WITNESS: I was told that he was
5 like a shop supervisor, but I never knew what
6 his position was outside of what I was being
7 told.

8 BY MS. HILL:

9 Q. And were you told that Mr. Pender
10 allegedly said this only to bargaining unit
11 members or to anyone outside of the bargaining
12 unit?

13 A. I don't know who all he told besides
14 the individuals that told me.

15 Q. Okay. There was more than one
16 individual who told you about these allegations
17 that -- regarding Mr. Pender, correct?

18 A. Yes.

19 JUDGE ROSAS: Just for your
20 information, the stipulation refers to
21 Mr. Pender as service manager from -- for the
22 period of July 2, 2018 to November 11, 2019,
23 correct?

24 MS. HILL: That is correct, sir, and
25 that's just for the Franksville location.

1 JUDGE ROSAS: Okay.

2 BY MS. HILL:

3 Q. And these statements alleged --
4 allegedly said by Mr. Pender, did they occur at
5 the Franksville profit center?

6 A. Yes.

7 Q. Are you aware that on or about
8 April 22nd or 23rd of 2019 Mr. Anderson
9 allegedly interrogated employees about their
10 union sympathies?

11 A. Yes.

12 Q. And when did you learn about that?

13 A. Around that time. I don't recall.

14 Q. And what did he allegedly ask the
15 employees?

16 A. It was something -- it's been a while.
17 I don't recall. It was something referenced to
18 the fact that why do you guys want the union.
19 We'll take care of you.

20 Q. Did he -- Mr. Anderson allegedly say
21 this just to bargaining unit members or to
22 anyone else?

23 A. I don't know. I wasn't there.

24 Q. And the individual was it one
25 individual who informed you or more than one?

1 A. I don't recall if that was the same two
2 or not and I believe it was one of the same guys
3 and a different individual both bargaining unit
4 members. So not the exact same two as the first
5 case with Chris Pender.

6 Q. Did you take notes of any of the
7 conversations you had with bargaining unit
8 members regarding the Chris Pender allegations?

9 A. I believe so.

10 Q. And did you produce those?

11 A. No.

12 Q. With respect to the allegations
13 involving Mr. Anderson interrogating employees
14 about their sympathies, did you take notes about
15 that?

16 A. I don't recall if I did or not.

17 Q. There is a separate allegation. Are
18 you aware that the separate allegation about
19 Mr. Anderson alleges that on or about April 22nd
20 or 23rd of 2019 Mr. Anderson interrogated
21 employees about their activities?

22 A. I believe so, yeah.

23 Q. Are you -- you believe so, do you
24 recall with certainty, sir?

25 A. Yes. Yes.

1 Q. And how many people informed you about
2 that?

3 A. I'd say two.

4 Q. And when did you receive that
5 information?

6 A. Probably around late April like you
7 discussed.

8 Q. Did you take notes?

9 A. I believe I have it somewhere.

10 Q. Did you produce them to your attorney,
11 or excuse me, attorneys?

12 A. I don't recall.

13 JUDGE ROSAS: Counsel, let me just
14 interject at this point. I know you are going
15 beyond the scope of direct which is fine in the
16 instance in which you would be putting on
17 evidence or addressing this with this witness on
18 your case.

19 MS. HILL: Right.

20 JUDGE ROSAS: I don't see that that
21 would be the case. I think it's fine that
22 you're establishing from this witness the
23 possible existence of notes to which I then ask
24 counsel you have witnesses that are going to
25 testify to these statements -- these alleged

1 statements?

2 MR. WIESE: Yeah. Yes. Directly.

3 JUDGE ROSAS: So these will individuals
4 testify. I am directing you to preserve those
5 records and to provide them to counsel during
6 this hearing should that be requested by counsel
7 for respondent once those witnesses testify so
8 we can have those available for her for cross
9 examination as prior statements, okay?

10 THE WITNESS: Yes, sir.

11 JUDGE ROSAS: Unless somebody objects
12 to the documents as privileged at that point.

13 MR. RYAN: No.

14 MR. WIESE: I wouldn't be.

15 JUDGE ROSAS: Okay. All right. So but
16 at this point, I think you need to move through
17 this because he is not your best witness on this
18 stuff.

19 BY MS. HILL:

20 Q. Correct. That was the last of those
21 allegations involving those two individuals.
22 Sir, you indicated that you took some
23 photographs of Sunbelt employees working at the
24 Franksville profit center after the
25 reorganization. Have those photographs been

1 posted on social media?

2 A. No.

3 Q. Have those photographs been produced on
4 paper for Local 139's use?

5 A. No.

6 Q. During the negotiation session --
7 excuse me -- during a negotiation session, did
8 you -- you discussed how you taught a labor
9 history course, correct?

10 A. Yes.

11 Q. And that was not relevant to the
12 negotiations going on at the time, correct?

13 A. That was during a certain time when you
14 guys were discussing training and I brought that
15 up about the training that we do.

16 Q. So labor history training was relevant
17 to Sunbelt's work?

18 A. It's related to safety training and
19 education, yes.

20 Q. What personal matters were discussed by
21 Sunbelt during negotiation sessions?

22 A. I don't recall.

23 Q. Do you recall during a negotiation
24 session that Mr. West informed the Sunbelt
25 negotiation team that the union was busy in

1 December because it met all of its members
2 during that month?

3 A. Yes.

4 Q. And that the union negotiating team
5 would not be available for several weeks during
6 December of 2018, correct?

7 A. No.

8 Q. You don't recall that, correct?

9 A. No. We were available on December 10th
10 and December 18th I believe.

11 Q. But other weeks you were not available,
12 correct, because of meeting with the union
13 members?

14 A. Yeah.

15 Q. Throughout the state?

16 A. Yes.

17 Q. During a negotiation session, did
18 Mr. West also discuss that he was a marine?

19 A. Yes.

20 Q. Was that relevant to negotiations?

21 A. No.

22 Q. Did Mr. West during negotiations also
23 state that Sunbelt did not show respect to him?

24 A. Yes.

25 Q. And was Sunbelt's response to him that

1 because he was a marine, Sunbelt respected him?

2 A. Yes.

3 Q. And was that statement by Mr. West
4 relevant to any of the negotiations?

5 A. No.

6 Q. At any time between March 1st of 2018
7 and the present, were you ever told that Sunbelt
8 did not have an intention of reaching an
9 agreement with Operating Engineers 139?

10 A. I was not told that.

11 Q. What percentage of the business at the
12 Franksville profit center before the
13 reorganization came from walk-in customers?

14 A. I have no knowledge of that.

15 Q. What percentage of the business at the
16 Franksville profit center after the
17 reorganization comes from walk-in customers?

18 A. I have no knowledge of that.

19 Q. How many days did you spend taking
20 photographs at the profit center after the
21 reorganization?

22 A. Myself, I was pretty busy doing other
23 things, so, myself, half a dozen to ten maybe.

24 Q. And how much -- and how much of the
25 time per day of those half a dozen to ten?

1 A. I'd say an hour or two.

2 Q. And who else was there taking
3 photographs?

4 A. Dan Marsolek.

5 Q. And how many days did the other -- did
6 Mr. Marsolek spend taking photographs at the
7 Franksville profit center after the
8 reorganization?

9 A. Exactly, I don't know.

10 Q. Approximately.

11 A. A few times a week.

12 Q. Did you take photographs at the
13 Waukesha general tool location for Sunbelt?

14 A. No.

15 Q. Did Mr. Marsolek take photographs at
16 the Waukesha general tool facility?

17 A. I don't recall.

18 Q. What facts do you have that prove that
19 non-bargaining employees at the Franksville
20 profit center were assigned to do bargaining
21 unit work?

22 A. I'm sorry. Say that again.

23 Q. What facts do you have that prove
24 non-bargaining employees at the Franksville
25 profit center were assigned to bargaining unit

1 work?

2 A. We have pictures and videos showing
3 that.

4 Q. Okay. You showed a video yesterday of
5 an outside hauler, correct?

6 A. Yes.

7 Q. Okay. My question was non-bargaining
8 employees at the profit center?

9 A. The pictures show that.

10 Q. Okay. And you indicated that you knew
11 there was one non-bargaining unit employee,
12 Mr. Stamm, who was at the profit center?

13 A. Yes.

14 Q. Doing what you allege was bargaining
15 unit work?

16 A. Yes.

17 Q. And how much time did he spend?

18 A. I was only there for about an hour.
19 The time that I was there and followed him into
20 the shop.

21 Q. Now, when you say the shop, are you
22 referring to --

23 A. The yard.

24 Q. Into the yard?

25 A. Yes.

1 Q. And that's separate from where the
2 mechanics work?

3 A. Yes.

4 Q. So you only saw him in the yard for
5 maybe one hour?

6 A. That day.

7 Q. Did you see him any other day?

8 A. I don't recall.

9 Q. Any other non-bargaining employees
10 doing bargaining unit work at the Franksville
11 profit center?

12 A. I seen other employees. I just didn't
13 know who they were. They had Sunbelt vests on
14 so they were I'm assuming an employee.

15 Q. The high viz vests?

16 A. Yes.

17 Q. But sitting here today, you don't know
18 whether they were outside haulers or Sunbelt
19 employees?

20 A. They were driving the same trucks like
21 everybody else that worked there.

22 Q. Okay. I thought you said that they
23 were in the yard.

24 A. They were in the yard picking up
25 equipment to deliver.

1 Q. And were they delivering transferring
2 the equipment to other Sunbelt profit centers?

3 A. No.

4 Q. Do you have photographs of that, sir?

5 A. No.

6 Q. Then where was the equipment delivered?

7 A. Various job sites.

8 Q. And you followed them there?

9 A. Some of them.

10 Q. Do you have notes?

11 A. I'd have to go back. I don't know.

12 Q. Which job sites?

13 A. I'd have to check. I don't recall.

14 Q. Do you have -- but you have to check.
15 What do you have to check?

16 A. To see if I have it in my notes.

17 Q. These notes were not produced to your
18 attorney?

19 A. Yes.

20 Q. They were produced?

21 A. Were not.

22 Q. Were not produced. And you do not know
23 if those non-bargaining employees who were
24 transferring equipment from the Franksville yard
25 to a job site were from other profit centers

1 within Wisconsin, correct?

2 A. You are correct.

3 Q. Was the union ever unprepared for
4 negotiation, sir?

5 A. Just the one time where we didn't get
6 you those sign-off E-mail.

7 Q. The sign-off E-mail? You mean the
8 electronic?

9 A. G6 or General Exhibit G6, yeah.

10 Q. Okay. Was there also a day when
11 Mr. Steve Buffalo stated that he did not have
12 the draft CBA that everyone was referring to?

13 A. I don't recall.

14 Q. And was there a second incident when
15 the union identified 13 provisions of the CBA
16 that it believed to be revised only to be told
17 that many of those provisions had already been
18 TA'd?

19 A. Yeah. I remember you saying that.

20 Q. And was there also a situation in which
21 Mr. Buffalo asked Sunbelt for a clean copy of
22 Sunbelt's February 21, 2019 proposals because he
23 did not have one?

24 A. I don't recall that.

25 Q. And there is no requirement that all

1 CBAs that the 139 negotiates must be identical,
2 correct?

3 A. You are correct.

4 Q. But there was -- the union took the
5 position on several occasions that it would not
6 agree to Sunbelt's proposal because it was not
7 the same as other CBAs, correct?

8 A. That's not exactly how it was put, no.

9 Q. Well, how was it put, sir?

10 A. It was put we'd like to keep it the
11 same. We want our insurance and part of our
12 pension in there. That's how we said it.

13 Q. But there were other proposals that you
14 said these are not identical to what you had --
15 what Sunbelt had in other CBAs, correct?

16 A. Yes.

17 Q. And you objected to any revision to any
18 other CBA, correct?

19 A. Repeat that question.

20 Q. The union negotiating team objected to
21 any revision that Sunbelt had to provisions that
22 existed in the 150 contract that the union
23 proposed and the 324 contract that the union
24 proposed?

25 MR. WIESE: Objection, your Honor. I

1 mean, why are we talking about 150 and 324
2 contracts? I mean, this is a --

3 MS. HILL: Do you want me to answer
4 that because he recognized that yesterday he
5 said that the contract that he made had
6 provisions that Sunbelt already agreed to with
7 the 150 and 324. He mentioned John Sarafin so I
8 believe that opens the door for questioning
9 regarding that.

10 JUDGE ROSAS: Limited question. You
11 can answer that one. Go ahead.

12 THE WITNESS: Rephrase -- say it again,
13 please. I'm sorry.

14 MS. HILL: I'll ask the court reporter
15 to do that, please.

16 (Whereupon, the record was read
17 as requested.)

18 THE WITNESS: I don't recall that.

19 BY MS. HILL:

20 Q. Okay. Just to follow up on one more
21 item. You sent a letter to the Sunbelt
22 negotiating team in June of 2019 that requested
23 hourly rates, health insurance premiums, 401K
24 contributions for all facilities in Wisconsin,
25 correct?

1 A. Yes.

2 Q. The letter gave Sunbelt a ten-day
3 deadline to respond, correct?

4 A. I believe so.

5 Q. And did Sunbelt respond to that letter?

6 A. I don't recall. I'm sorry.

7 MS. HILL: Okay. No further questions
8 at this time. We reserve the right --

9 JUDGE ROSAS: Redirect?

10 MR. WIESE: Could I have a couple
11 minutes to review my notes?

12 JUDGE ROSAS: Sure. Off the record.

13 MR. WIESE: Just give me five.

14 (Whereupon, a short recess was
15 taken.)

16 JUDGE ROSAS: Okay. Cross -- redirect?

17 REDIRECT EXAMINATION

18 BY MR. WIESE:

19 Q. Thank you. Mr. Ervin, I'd like to
20 direct your attention to General Counsel
21 Exhibit 7A.

22 A. Okay.

23 Q. So there was some discussion about the
24 note in the upper right-hand corner of this
25 document. Pat Hill says this is new NLRB rules.

1 Do you recall that?

2 A. Yes.

3 Q. Okay. Was this an explanation for why
4 Sunbelt was making this proposal?

5 A. Yes.

6 Q. Okay. Were there other proposals where
7 Sunbelt did not provide an explanation for why
8 they were making those proposals?

9 A. Yes.

10 Q. Okay. What are some of those?

11 A. Why they would refuse to pay the
12 admin -- or do the dues checkoff. They
13 initially refused the wages or declined the
14 wages.

15 Q. Was this a notable event for Sunbelt to
16 be explaining why it was making a proposal?

17 MS. HILL: Objection. Form. Opinion.
18 Relevancy.

19 JUDGE ROSAS: Rephrase it slightly, the
20 "notable."

21 BY MR. WIESE:

22 Q. Why did you mark this in your
23 notes this specific notation here?

24 A. Just for our own preparation and
25 knowledge of why they did what they did.

1 Q. Was this something that Sunbelt was
2 routinely doing at the bargaining table?

3 A. No.

4 Q. Okay.

5 MR. WIESE: No further questions.

6 JUDGE ROSAS: Charging Party, anything?

7 MR. RYAN: Just a couple clarifying
8 things.

9 RE CROSS EXAMINATION

10 BY MR. RYAN:

11 Q. Mr. Ervin, could you find in front of
12 you General Counsel Exhibits 6A and 6D?

13 MS. HILL: Is that D?

14 MR. RYAN: Yes. A and D as in dog.

15 THE WITNESS: Yes.

16 BY MR. RYAN:

17 Q. Do you have those two documents?

18 A. Yes, I do.

19 Q. I think it was clear on cross but it
20 might have gotten a little confused or clear on
21 direct but might have gotten a little confused
22 on cross. What is 6A in comparison 6D?

23 A. 6A in comparison to 6D is an update
24 like a revised edition of 6D.

25 Q. Do you maybe have that reversed?

1 MS. HILL: Objection. Leading.

2 JUDGE ROSAS: I'm sorry. Repeat that
3 question.

4 MR. RYAN: I asked if maybe that order
5 was reversed.

6 JUDGE ROSAS: Sustained. Rephrase.

7 BY MR. RYAN:

8 Q. Okay. If you look at 6D the first page
9 Section 1.2, what's notable about that paragraph
10 just looking at it without --

11 A. It is the revised.

12 Q. How do you know that?

13 A. Because of the crossed outlines.

14 Q. Okay. And if you looked at Section 1.2
15 of 6A?

16 A. It is not -- I misspoke on which draft
17 was which. I apologize.

18 Q. I just want the record to be clear.

19 A. Yes, sir.

20 Q. So what is 6A?

21 A. 6A is our original draft, 6D is our
22 revised draft.

23 Q. And the original draft you mean the one
24 from May of 20th -- May 22nd?

25 A. Yes.

1 Q. And the revised one, when was that?

2 A. I think we produced it to them in
3 October.

4 Q. Okay. Thank you. One other question.
5 Who for Local 139 sitting at the bargaining
6 table had authority to accept any proposals that
7 were on the table from Sunbelt?

8 A. Greg or I along with Steve Buffalo.

9 MR. RYAN: Okay. Nothing further.
10 Thank you.

11 MS. HILL: No further questions.

12 JUDGE ROSAS: Okay. Thank you. Sir,
13 you are excused. Do not discuss your testimony
14 with anyone except with counsel and except as
15 otherwise instructed, all right?

16 THE WITNESS: Yes, sir. I am just
17 going to put these in order for you.

18 JUDGE ROSAS: Ready with your next
19 witness? Off the record.

20 (Whereupon, a short recess was
21 taken.)

22 JUDGE ROSAS: All right. On the
23 record. Next witness.

24 MR. WIESE: Your Honor, counsel for the
25 General Counsel calls Greg West to the stand.

1 (Witness sworn.)

2 JUDGE ROSAS: Please have a seat and
3 state and spell your name and provide us with an
4 address.

5 THE WITNESS: Gregory West,
6 G-R-E-G-O-R-Y. W-E-S-T, 2461 South 95th Street,
7 West Allis, Wisconsin 53227.

8 GREGORY WEST,
9 after being first duly sworn, deposeth and saith
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. WIESE:

13 Q. Mr. West, where do you currently work?

14 A. I work for the International Union of
15 Operating Engineers Local 139 at their Pewaukee
16 headquarters.

17 Q. What's your position with Local 139?

18 A. I am the District A manager.

19 Q. What do you do in this position?

20 A. I oversee the day-to-day operation
21 between the administrative staff at the office
22 as well as the activities of the business
23 representatives taking care of southeastern
24 Wisconsin.

25 Q. In your position, do you have any role

1 in negotiating CBAs?

2 A. I do.

3 Q. And what is your role with respect to
4 negotiations?

5 A. I have negotiated multiple Collective
6 Bargaining Agreements.

7 Q. Who do you report to in the union?

8 A. Steve Buffalo, chief of staff, Terry
9 McGowan business manager, president of
10 Local 139.

11 Q. And who reports to you?

12 A. The district day staff would be three
13 administrative ladies would handle dues, admin
14 dues, day-to-day activities at the office and
15 the business representatives.

16 Q. How long have you worked as a District
17 A manager?

18 A. Since April of 2015.

19 Q. And how long have you worked for
20 Local 139 in total?

21 A. February 12, 2007.

22 Q. And during your time working for
23 Local 139, how many Collective Bargaining
24 Agreements have you negotiated?

25 A. Roughly 50.

1 Q. Are you familiar with the respondent in
2 this case, Sunbelt Rentals, Inc.?

3 A. Yes.

4 Q. How are you familiar with them?

5 A. We are currently trying to negotiate a
6 first time Collective Bargaining Agreement.

7 Q. And have you participated in those
8 negotiations?

9 A. I have.

10 Q. Who served as the lead note taker for
11 the union during those negotiations?

12 A. Generally speaking, it was myself.

13 Q. How many times have you served as a
14 lead note taker in collective bargaining
15 negotiations?

16 A. A lot.

17 Q. Can you quantify that?

18 A. 35, 40 times.

19 Q. What's your process for taking notes
20 during negotiations?

21 A. Well, I try to document where, what,
22 when.

23 Q. Do you take your notes as bargaining is
24 occurring?

25 A. Yes.

1 Q. Do you modify them in any way after the
2 bargaining sessions conclude?

3 A. No.

4 Q. And was that the practice that you
5 followed with regard to Sunbelt?

6 A. Yes.

7 Q. Okay. I'd like to direct your
8 attention to General Counsel Exhibit 5A. That
9 will be up in that stack there. The documents
10 should be in order.

11 A. Okay.

12 Q. Do you recognize this document?

13 A. I do.

14 Q. What is it?

15 A. It's my notes from the Sunbelt
16 negotiations dated May 22, 2018.

17 Q. And up top in the upper right-hand
18 corner of the document, May 22, 8:00 a.m. what
19 does that indicate?

20 A. Those were the participants for the
21 company and then for the union.

22 Q. Okay. And were the participants for
23 the company are those listed up top?

24 A. They are.

25 Q. And then below that are the

1 participants for the union?

2 A. Correct.

3 Q. And above all of that I see a date and
4 time. What does that date and time indicate?

5 A. That indicates the date and the time of
6 the negotiations that were scheduled to begin.

7 Q. And is this something that you tried to
8 do consistently throughout your notes?

9 A. Yes.

10 Q. And the same with regard to
11 participants?

12 A. Yes.

13 Q. If you turn to Page 2 of these notes --

14 A. Yes.

15 Q. -- I see near the bottom of those
16 notes, time 8:20 and then company caucus. Do
17 you see that?

18 A. I do.

19 Q. What does that signify?

20 A. I try to document when one party or the
21 other will take a caucus and at what time the
22 negotiations reconvene.

23 Q. Okay. And the time below that 8:38,
24 does that indicate when the negotiations
25 reconvened?

1 A. It indicates when Pat Hill returned to
2 the room.

3 JUDGE ROSAS: Okay. Let's put a pause
4 for a second. So again, we are not to read from
5 any documents unless they are in evidence.

6 MR. WIESE: Thank you, your Honor. My
7 apologies.

8 JUDGE ROSAS: Just because I think we
9 are going to have a bunch of these so I am
10 pretty religious about belaboring documents that
11 speak for themselves, especially in these kind
12 of cases. It's not going to happen.

13 MR. WIESE: Right.

14 JUDGE ROSAS: Okay. I'll let you all
15 know that right here. The notes appear to have
16 a style of pros English, understandable to a
17 great extent so I am going to be very tight
18 about what needs to be elaborated on as in what
19 does something mean that is clearly written.

20 MR. WIESE: Okay.

21 JUDGE ROSAS: Unless it's not clearly
22 written.

23 MR. WIESE: Okay.

24 JUDGE ROSAS: Or not clearly obvious.

25 MR. WIESE: Okay.

1 JUDGE ROSAS: So I hate to cut off the
2 lot of the questioning you might have otherwise
3 planned on direct or on cross examination for
4 that matter. Okay. These notes are what they
5 are. Unless, Counsel, you can have a voir dire
6 at this time because you are intending to offer
7 these, correct?

8 MR. WIESE: I am, your Honor.

9 JUDGE ROSAS: You can have a voir dire
10 at this time and I can also anticipate, Counsel,
11 from the previous cross examination that you are
12 very thorough. You are going to be very
13 thorough about what's transpired in this case so
14 I am going to hold you in contrast with my usual
15 rule of allowing for expanded voir dire that
16 might otherwise suffice for subsequent cross
17 examination. I don't think it's going to have
18 that effect here, so I am going to hold you to
19 the just basic questions of whether or not this
20 should go into evidence and whether it is --
21 what it appears to be or whether there is some
22 other basis for an objection.

23 So go ahead. Do you have any objection
24 to the introduction of General Counsel's 5A?

25 MS. HILL: The only question I had

1 because it wasn't asked on direct was are there
2 any notations on this five-page document, sir,
3 that are not your notes? Meaning not your
4 handwriting?

5 THE WITNESS: No.

6 MS. HILL: Okay. Thank you. That's
7 it, your Honor.

8 JUDGE ROSAS: Any objection?

9 MS. HILL: No objections.

10 JUDGE ROSAS: Okay. General Counsel's
11 5A is in evidence.

12 (GCX 5A received.)

13 MR. WIESE: And, your Honor --

14 JUDGE ROSAS: You know what, Counsel,
15 we have got a bunch of these that were all lined
16 up.

17 MR. WIESE: Yep.

18 JUDGE ROSAS: Why don't you just deal
19 with them all in mass and then proceed from
20 there? See what are not going to qualify and
21 which do and see if you have any actual
22 questions of any of them.

23 MR. WIESE: Yes. I will have a couple
24 of follow-up questions. Please let me know if
25 you think they are cumulative of the document.

1 JUDGE ROSAS: Very good. So ask him
2 about the group.

3 BY MR. WIESE:

4 Q. There is a whole stack of notes
5 following General Counsel Exhibit 5A, there is
6 5B, please go through them with me as I do.

7 A. Uh-huh.

8 Q. And then 5C.

9 A. Yep.

10 Q. And then after that is General Counsel
11 Exhibit 5D.

12 A. Yep.

13 Q. And then after that is General Counsel
14 Exhibit 5F and after General Counsel Exhibit 5F
15 it goes to I believe General Counsel Exhibit 5O
16 inclusive.

17 A. I have a 5G here.

18 Q. Right. But if you continue all the way
19 to the end of the notes.

20 JUDGE ROSAS: So just G, H, I, J, K.

21 MR. WIESE: L, M, N and O inclusive.

22 JUDGE ROSAS: Okay.

23 THE WITNESS: Yes. I have them here.

24 BY MR. WIESE:

25 Q. And do you recognize these documents?

1 A. Yes.

2 Q. What are they?

3 A. They are the notes that I took during
4 the negotiation sessions with Sunbelt Rentals.

5 Q. Are these all the notes that you took
6 during those negotiation sessions?

7 A. I guess I didn't go through all of
8 them. Can I go through all of them?

9 MR. WIESE: Yes.

10 MS. HILL: And, your Honor, perhaps to
11 speed things up if we could also ask him if
12 there is anything -- any handwriting other than
13 his own, would that be appropriate during his
14 inspection.

15 JUDGE ROSAS: You heard counsel just --

16 THE WITNESS: I did.

17 MS. HILL: Is that okay, Mr. Wiese?

18 MR. WIESE: Yes.

19 THE WITNESS: Okay. I have reviewed
20 them all.

21 BY MR. WIESE:

22 Q. Okay. And are these your bargaining
23 notes from those negotiations?

24 A. They are.

25 Q. And did you take these notes as

1 bargaining was occurring?

2 A. Yes.

3 Q. Okay. Did you modify them in any way
4 that you can recall?

5 A. No.

6 Q. So with regard to the handwriting,
7 there is one place that I'd like to direct you.
8 If you go to General Counsel Exhibit 5B, Page 1
9 of that document.

10 A. Okay.

11 Q. About two-thirds of the way down the
12 page above July 30th where it says cancelled --
13 excuse me, your Honor. That was -- Strike that
14 line of questioning.

15 MR. WIESE: I'll offer General Counsel
16 Exhibit 5B, C, D, and then F through O
17 inclusive.

18 MS. HILL: Just the one question that
19 he didn't ask. Any of the handwriting on those
20 documents that you reviewed, Mr. West, not
21 yours?

22 THE WITNESS: No.

23 MS. HILL: Thank you, sir. No
24 objection, sir.

25 JUDGE ROSAS: Okay. So General

1 Counsel's 5B through 5O are received in
2 evidence. Go ahead.

3 (GCX 5B-5D, 5F-5O were received.)

4 BY MR. WIESE:

5 Q. With the exception of 5B which was
6 already in evidence. So there is just a couple
7 of things, Mr. West, that I'd like to ask you
8 about in these notes. So if you go back to the
9 very beginning, General Counsel Exhibit 5A, your
10 notes from the first session.

11 A. Yes.

12 Q. The first page the very bottom of that
13 page, the notation never have rules, do you see
14 that there?

15 A. I do.

16 Q. Okay. Whose position was that?

17 A. That was the employer Sunbelt.

18 Q. Do you recall who stated that position
19 for the employer?

20 A. Pat Hill.

21 Q. And if you go over to the second page
22 of those notes, General Counsel Exhibit 5A,
23 about a third of the way down the page where it
24 says proposed week of the 11th of June, do you
25 see that line?

1 A. I do.

2 Q. Whose position was that?

3 A. The union's.

4 Q. And who stated that position for the
5 union?

6 A. I believe it was me.

7 Q. Okay. If you go a little bit further
8 down the page, where it says Steve passed around
9 suggestions we sit in cars, do you see that?

10 A. Yes.

11 Q. What was the context of that note?

12 A. Well, we got to the point where the
13 company was going to caucus and it was suggested
14 that we sit in our cars during that caucus.

15 Q. And who suggested that?

16 A. The -- Pat Hill for the company.

17 Q. Going over to General Counsel
18 Exhibit 5B, I notice there aren't any
19 participants listed at the top of these notes.
20 Do you recall who was in attendance at those
21 negotiations?

22 A. Yes.

23 Q. Who was in attendance?

24 A. For the company it would have been Pat
25 Hill, Jason Mayfield, Bo Bogardus and Bryan

1 Anderson.

2 Q. What about for the union?

3 A. Steve Buffalo, Dan Marsolek, Mike
4 Ervin, Jamie Smith, the bargaining unit employee
5 participating and myself.

6 Q. If you go about a third of the way down
7 the first page where it says the notation
8 July 31st, is the only available date, do you
9 see that?

10 A. I do.

11 Q. Whose position was that?

12 A. The company's.

13 Q. Who stated that position for the
14 company?

15 A. Pat Hill.

16 Q. If you go over to the second page of
17 General Counsel Exhibit 5B.

18 A. Yes.

19 Q. About two-thirds of the way down the
20 page, there is a notation ask for
21 counterproposals in writing. Do you see that?

22 A. Maybe three-quarters of the way down
23 the page, yes.

24 Q. Whose position was that?

25 A. The union's.

1 Q. And who stated that position?

2 A. I did.

3 Q. Then if you go over to Page 5 of the --
4 of General Counsel Exhibit 5B.

5 A. Yep.

6 Q. So there is a time of 11:45, company
7 policy, do you see that?

8 A. Yes.

9 Q. And then below that a time 12:43
10 meaning reconvene, do you see that?

11 A. Yes.

12 Q. And the notes between those two
13 meetings, what do those notes represent?

14 A. That was the time frame between during
15 a caucus where we discussed some of the issues
16 that were presented and possible resolutions to
17 some of the proposals or counterproposals.

18 Q. And between the notes where you have
19 notes between a caucus beginning and end time,
20 does that refer to discussions that occurred
21 during caucus?

22 A. It does.

23 Q. If you go over to General Counsel
24 Exhibit 5C --

25 A. Yes.

1 Q. -- so who was in attendance at these
2 negotiations?

3 A. For Sunbelt it would have been Pat
4 Hill, Jason Mayfield, Bo Bogardus, Bryan
5 Anderson. For the union it would be Gregory
6 West, Terry McGowan, Steve Buffalo, Dan Marsolek
7 and Jamie Smith the bargaining unit employee.

8 Q. And looking at the left-hand side of
9 those notes, there is some numbers that are
10 circled?

11 A. Yes.

12 Q. Do you see those numbers?

13 A. Yes.

14 Q. What do those numbers represent?

15 A. Those were bullet points as part of one
16 of the many proposals that had been discussed.

17 Q. If you go to Page 4 of those notes.

18 A. Yes.

19 Q. About a third of the way down the page,
20 the notation 8-30-18, 8:00 a.m., do you see
21 that?

22 A. Yes.

23 Q. What does that represent?

24 A. That would be the next scheduled
25 negotiations.

1 Q. And who would have proposed that date?

2 A. The company.

3 Q. Do you recall who from the company?

4 A. Pat Hill.

5 Q. So I am going to direct your attention
6 to a different document now. You are going to
7 have to dig through the stack for General
8 Counsel Exhibit 6B as in boy.

9 A. Okay.

10 Q. Do you recognize this document?

11 A. I do.

12 Q. Okay. What is it?

13 A. This is one of the proposals that was
14 being discussed.

15 Q. Whose proposal was this, do you recall?

16 A. This was the union's proposal.

17 Q. And the handwriting on the document, do
18 you recognize that?

19 A. Yes.

20 Q. Whose is it?

21 A. Mine.

22 Q. And if you go over to Page 2 of the --
23 of the document, there is some red line markings
24 on that proposal. Do you see those?

25 A. Yes.

1 Q. Okay. And then those continue onto
2 Page 3 of the document; is that right?

3 A. Yes.

4 Q. Okay. And what do those red line
5 markings represent?

6 A. Modifications to the proposal.

7 Q. By who?

8 A. The union.

9 Q. Then if you go over to Page 4 and 5 of
10 the proposal and I guess over to Page 6 as well.
11 Is that the same with respect to the red line
12 markings on those pages of the document?

13 MS. HILL: Objection. Form.

14 THE WITNESS: Yes.

15 JUDGE ROSAS: I'm sorry. Repeat the
16 question.

17 BY MR. WIESE:

18 Q. Did the red line -- I mean, I can
19 rephrase. I don't recall exactly how I phrased
20 the question.

21 JUDGE ROSAS: Go ahead.

22 BY MR. WIESE:

23 Q. Did the red line markings on Pages 4, 5
24 and 6 of General Counsel Exhibit 6B, were those
25 also changes presented by the union?

1 A. Yes.

2 MR. WIESE: I'll offer General Counsel
3 Exhibit 6B.

4 JUDGE ROSAS: Voir dire?

5 MS. HILL: Are any of the notes,
6 handwritten notes, on this exhibit not yours?

7 THE WITNESS: No.

8 MS. HILL: Thank you. No objection.

9 JUDGE ROSAS: General Counsel
10 Exhibit 6B is received.

11 (GCX 6B received.)

12 BY MR. WIESE:

13 Q. I'd like you to set aside your notes
14 now and also that proposal unless I reference
15 you to it and I am just going to ask you to
16 testify about your recollection from that
17 section.

18 A. Uh-huh.

19 Q. Was Mr. Ervin present at the bargaining
20 on August 8th of 2018?

21 A. No.

22 Q. How do you recall negotiations
23 beginning that day?

24 A. They began at 8:00 a.m. As was the
25 company's request, we had a safety moment. We

1 discussed various safety issues. We discussed
2 past negotiations, hoping to kind of get a feel
3 for where we have been and where we hoped to get
4 to by the end of this session, and then we the
5 company took a caucus.

6 Q. Okay.

7 MS. HILL: I'm sorry. I couldn't hear
8 the last response.

9 JUDGE ROSAS: The company took a
10 caucus.

11 MS. HILL: Thank you.

12 MR. WIESE: I'll ask you to speak up a
13 little bit, Mr. West.

14 THE WITNESS: Uh-huh. Be careful what
15 you ask for.

16 BY MR. WIESE:

17 Q. As you were going through the past
18 negotiations before the company took a caucus,
19 what items do you recall the parties discussing?

20 A. As I recall, we were discussing PTO,
21 FMLA.

22 Q. Was there any discussion about table of
23 contents?

24 A. Yes.

25 Q. And what do you recall from the

1 discussion around that item?

2 A. I believe we tentatively agreed to it.

3 Q. Okay. And what occurred that created
4 that belief?

5 A. We generated what we believed to be a
6 relatively accurate table of contents based on
7 the provisions contained within the Collective
8 Bargaining Agreement.

9 Q. And who from the employer stated that
10 it was tentatively agreed to?

11 A. Pat Hill.

12 Q. And who from the union stated that it
13 was tentatively agreed to?

14 A. I did.

15 Q. How long were the parties at the
16 bargaining table before the employer took a
17 caucus?

18 A. Roughly 20 minutes.

19 Q. Do you recall approximately how long
20 the employer's caucus lasted?

21 A. Hour and a half.

22 Q. Did the employer come back to the table
23 with any new proposals after that caucus?

24 A. We were discussing, again, I guess we
25 were talking the PTO, FMLA language. They had a

1 policy that called -- they called use it or lose
2 it and we wanted to verify if we have a program
3 of use it and lose it, are the employees offered
4 the opportunity through the 12-month period to
5 be able to use their time.

6 Q. And did the company's position coming
7 out of that first caucus was it different in any
8 respect with regard to the PTO policy that you
9 can recall?

10 A. No.

11 Q. Okay. And after these discussions
12 about the PTO policy of the employer's caucus,
13 what happened next?

14 A. As I recall, the union took a caucus I
15 want to say it was about 10:30.

16 Q. Okay. And how long was that union
17 caucus?

18 A. About a half hour.

19 Q. What was the purpose of that caucus?

20 A. To try to come up with modifications
21 that would be acceptable to both parties in
22 regards to the PTO use it or lose it and the
23 subjects that we were discussing.

24 Q. Did the employer come back to the
25 bargaining table after that caucus?

1 A. Once we called them back, it was a
2 little bit of time. I want to say about
3 15 minutes.

4 Q. And who called back, the employer?

5 A. I did.

6 Q. And who did you speak to from the
7 employer's negotiating team when you called them
8 back?

9 A. The whole company negotiating team had
10 an office that they were caucusing in so I guess
11 ultimately I was speaking to all of them.

12 Q. Who responded from the company when you
13 called them back?

14 A. Pat Hill.

15 Q. And what did Ms. Hill say?

16 A. They'd be --

17 THE REPORTER: I'm sorry, your Honor.
18 I didn't hear that.

19 THE WITNESS: They'd be right in.

20 BY MR. WIESE:

21 Q. Did they come back to the table after
22 that?

23 A. After about 15 minutes.

24 Q. And after that caucus, did the employer
25 come back to the table with any new proposals?

1 A. We started discussing some issues as it
2 related to just cause.

3 Q. Was there any modification that you can
4 recall the employer's proposals on just cause?

5 A. Well, they had some unique language
6 that they wanted to incorporate in this
7 Collective Bargaining Agreement which we tried
8 to reason with the company that really were
9 covered by state statute. They had a couple.
10 If an employee knew of another employee doing
11 something wrong legally, that it was their
12 obligation by company rule to turn them in.

13 Now, I mean, that's covered by state
14 law as well. I mean, it's called obstruction of
15 justice but they were relatively insistive and
16 in a spirit of moving forward, we reluctantly
17 came up with something that would work for both
18 parties.

19 Q. Besides the discussion of the just
20 cause provision, what else do you recall the
21 parties discussing after the union's caucus?

22 A. I believe that the conversation
23 continued on the PTO and the FMLA.

24 Q. Do you recall was there any discussion
25 about future dates for negotiations?

1 A. Yes.

2 Q. Okay. And what do you recall from
3 those negotiations?

4 A. They were available about 30 days from
5 then.

6 Q. Who said that?

7 A. Pat Hill.

8 Q. And what was the union's response to
9 that?

10 A. Well, the union was ready to negotiate
11 at any time so we would take whatever we could
12 get I guess.

13 Q. Did someone state that from the union?

14 A. Pretty much all of us, really.

15 Q. Okay. Can you recall who stated that
16 specifically at the August 8th session?

17 A. I did.

18 Q. Okay. And do you recall approximately
19 how long were the parties at the table that day?

20 A. Generally speaking it was four hours
21 that day. It was roughly the same, 8:00 until
22 about noon.

23 Q. Thank you. So I am going to -- We are
24 going to go back to your notes now, Mr. West.

25 I'd like to look at General Counsel Exhibit 5D.

1 A. Okay.

2 Q. So starting from the top of those
3 notes, where it says Pat Hill, were there other
4 employer negotiators there that day besides
5 Ms. Hill?

6 A. I would say yes.

7 Q. Okay. Can you recall who was there?

8 A. Jason Mayfield, Bo Bogardus, Bryan
9 Anderson.

10 Q. And if you go a third of the way down
11 the page, where it says dates hyphen, do you see
12 that at those notes there?

13 A. I do.

14 Q. And who -- whose position was that?

15 A. The union was trying to establish more
16 than once a month for the purpose of
17 negotiating.

18 Q. And who stated that position for the
19 union?

20 A. I did.

21 Q. And then the series of times below that
22 September 27th, October 23rd, November 13th,
23 et cetera, who proposed those dates?

24 A. That was what the company was available
25 for.

1 Q. So if you go to the bottom of Page 2 of
2 General Counsel Exhibit 5B --

3 A. Yep.

4 Q. -- where it says company caucus
5 10:25 --

6 A. Yes.

7 Q. -- do you recall when the company came
8 back from that caucus? I don't see it indicated
9 anywhere in the notes.

10 A. I would have to say that it was right
11 around noon.

12 Q. What's the basis for that?

13 A. Well, at the top of the Page 3, I had
14 taken the time to point out that there was three
15 hours of caucus out of a four-hour session.

16 Q. Okay. All right. Let's go on to
17 General Counsel Exhibit 5F.

18 A. Okay.

19 Q. So looking at the very top of the
20 notes, it looks like they are cut off a little
21 bit. Do you know what that says up there?

22 A. Yeah. That Dino, too, was at the
23 negotiations.

24 Q. Okay.

25 A. Oh, actually, it states that myself and

1 Dan Marsolek had been absent from Session 5. We
2 had a very young member died unexpectedly and we
3 attended his funeral.

4 Q. Did negotiations still take place at
5 that session?

6 A. They did.

7 Q. Do you recall who was in attendance at
8 these negotiations?

9 A. Yes.

10 Q. Who was there?

11 A. Pat Hill, Jason Mayfield, Bo Bogardus,
12 Bryan Anderson. For the union Steve Buffalo,
13 Dan Marsolek, Mike Ervin, Jamie Smith and
14 myself.

15 JUDGE ROSAS: Hold on a second. Is
16 this Session 5 that you are absent at?

17 THE WITNESS: No. This would be
18 Section 6 then.

19 JUDGE ROSAS: What were you absent at?

20 THE WITNESS: Session 5.

21 JUDGE ROSAS: What was that? What date
22 was that?

23 THE WITNESS: That would have been the
24 August 30th session.

25 MR. WIESE: Well, I mean, it's

1 reflected in the notes. I don't know if you
2 want him to testify independently as to the date
3 that he recalls the session that he wasn't at
4 but --

5 JUDGE ROSAS: You weren't present on
6 August 30th?

7 THE WITNESS: That's correct.

8 JUDGE ROSAS: Whose notes are these?

9 MR. WIESE: Those are --

10 BY MR. WIESE:

11 Q. So if you look at General Counsel
12 Exhibit 5E --

13 MS. HILL: Is that D or B?

14 MR. WIESE: E, E as in eagle.

15 MS. HILL: Sorry.

16 MR. WIESE: No. That's okay. There is
17 some close letters.

18 JUDGE ROSAS: Okay.

19 BY MR. WIESE:

20 Q. So, Mr. West, are these your bargaining
21 notes?

22 A. For which one?

23 Q. General Counsel Exhibit 5E.

24 A. They are not.

25 Q. Okay. Were you at the negotiations at

1 that session?

2 A. If that was Session 5, it was, no, I
3 was not. I was attending a funeral.

4 JUDGE ROSAS: Okay. So that's in
5 between August 30th and October 23rd. Okay.

6 MR. WIESE: Yes. Yes.

7 JUDGE ROSAS: Okay.

8 BY MR. WIESE:

9 Q. So going do you have General Counsel
10 Exhibit 5F in front of you?

11 A. I do.

12 Q. I know we jumped around a little bit.
13 Okay. So going down to the bottom of Page 1 of
14 those notes, the notation 9:37 meeting
15 reconvene, we are shorthanded. These two guys
16 are answering phones. Do you recall who those
17 two guys were?

18 A. Yes. Bo Bogardus and Bryan Anderson.

19 Q. If we go over to General Counsel
20 Exhibit 5G --

21 A. Okay.

22 Q. -- looking at the first page of that
23 document, there is about a third of the way down
24 below where it says Mike Ervin, dates, do you
25 see that?

1 A. Yes.

2 Q. Okay. The date is January 28th of 2019
3 and February 1st of 2019. Who proposed those
4 dates?

5 A. Those were the dates that the company
6 provided us that they were available.

7 Q. So if you go to the very end of these
8 notes in General Counsel Exhibit 5G --

9 A. Yes.

10 Q. -- the very last notation is 10:46
11 company caucus and then 12:30 leave, company
12 still in caucus?

13 A. Yes.

14 Q. Okay. Do you recall what was going on
15 at that time?

16 A. Well, the company obviously was
17 caucusing, they were taking an extremely long
18 time during their caucus and we left. We
19 announced that we left of course.

20 Q. Who announced that?

21 A. It was me. I'm sure it was me. I am
22 sure.

23 MS. HILL: Thank you.

24 BY MR. WIESE:

25 Q. Then if we go to General Counsel

1 Exhibit 5H.

2 A. Yes.

3 Q. Who was in attendance at these
4 negotiations?

5 A. For the company it would be Pat Hill,
6 Jason Mayfield, Bo Bogardus, Bryan Anderson.
7 For the union it would be Steve Buffalo, Mike
8 Ervin, Dan Marsolek, Jamie Smith, and myself.

9 Q. If you turn over to the second page of
10 your notes, next to the notation 10:25 asked to
11 reconvene. Company socialized with vendor while
12 we wait. Do you see that?

13 A. Yes.

14 Q. Do you recall who from the company was
15 socializing with the vendor?

16 A. Pretty much the whole negotiating team.

17 Q. Okay. If you go over to Page 4 of your
18 notes in General Counsel Exhibit 5H...

19 A. Yes.

20 Q. Okay. The notation at the very bottom
21 of that page next to 12:16, do you see that?

22 A. Yes.

23 Q. It looks like it's cut off. Can you
24 read what that says?

25 A. Oh. Yeah. The company was still

1 caucusing but Bo was attending his day-to-day
2 duties at the counter.

3 Q. If you go over to Page 6 of those notes
4 from that session --

5 A. Yes.

6 Q. -- where it says resubmit proposals as
7 is. No movement. Whose position was that?

8 A. Could you say that again, please?

9 Q. Sorry, yes. Yes. I'll speak up.
10 Resubmit proposals as is. No movement, do you
11 see that?

12 A. I see where I and Dan pointed out that
13 there was no movement, yes and then we
14 resubmitted the proposals as is with no
15 movement.

16 Q. Okay. Was that something that the
17 union did?

18 A. Yes.

19 Q. Okay. If you go over to General
20 Counsel Exhibit 5I --

21 A. Yes.

22 Q. -- about a third of the way down the
23 page, the notation TM there --

24 A. Yes.

25 Q. -- what does that stand for?

1 A. Terry McGowan.

2 Q. So looking at Page 3 of these notes
3 now --

4 A. Yes.

5 Q. -- if you go to see where it says 9:17
6 company caucus about three quarters of the way
7 down the page --

8 A. Yes.

9 Q. -- and then if you look at the notes on
10 the bottom of Page 3, about Pat Hill coming back
11 to the room.

12 A. Yes.

13 Q. Was she joined by any other members of
14 the employer's negotiating team at that time?

15 A. No.

16 Q. Okay. Were the parties actually in
17 negotiation during that time?

18 A. Well, they were in their caucus.

19 Q. But were the parties meeting
20 face-to-face?

21 A. No.

22 Q. And how long after that 9:17 caucus was
23 it until the parties met face-to-face again?

24 A. 1:00 in the afternoon.

25 Q. Okay. And where do your notes indicate

1 that?

2 A. Well, we went to lunch at 11:46 because
3 the company was still caucusing. We returned
4 from lunch at 12:40. Sunbelt was gone. And at
5 12:56 I asked for 139 caucus so right around
6 1:00 we reconvened, 5 to 1:00.

7 Q. Let's go over now to General Counsel
8 Exhibit 5J.

9 A. Okay.

10 Q. And, actually, well, I do have one
11 question for you with regard to these notes. If
12 you go over to Page 6 of the notes --

13 A. Yes.

14 Q. -- about a third of the way down the
15 page, the letters NTF, what does that stand for?

16 A. National Training Fund.

17 Q. And then two lines below that the
18 letter CPF, what do those stand for?

19 A. Central Pension Fund.

20 Q. Okay. Thank you. And, Mr. West, I am
21 again going to ask you to put your notes away
22 and have you testify independent of your
23 recollection as to what occurred at that
24 session.

25 A. Okay.

1 Q. How do you recall the negotiations
2 beginning on March 21st?

3 A. Well, we began at 8:30 that morning.
4 The union began by offering condolences to the
5 Sunbelt team as a result of a fatality which
6 occurred in the Florida area.

7 Q. And after that initial offering of
8 condolences, what do you recall the parties
9 discussing next?

10 A. I, on behalf of the union, pointed out
11 that the union was tired of the company's stall
12 tactics.

13 Q. And what response, if any, did the
14 employer have to that?

15 A. Not positive.

16 Q. Can you be more specific?

17 A. They suggested they weren't stalling.

18 Q. Who suggested that?

19 A. Pat Hill.

20 Q. What, if any, substantive topics do you
21 recall being discussed at the beginning of that
22 bargaining session?

23 A. We were discussing on call, on call
24 status, the conditions around an on call and if
25 you get called back to work.

1 Q. Was there any discussion about wages at
2 the beginning of that session?

3 A. Yes. We asked for --

4 MS. HILL: Objection. Leading.

5 JUDGE ROSAS: Sustained. No leading.

6 BY MR. WIESE:

7 Q. What do you recall from the discussion
8 around wages?

9 A. Well, obviously we were still waiting
10 on a counterproposal from our February 8th wage
11 proposal which included health, pension and a
12 wage proposal.

13 Q. Who brought up that proposal for the
14 union?

15 A. We proposed it on February 8th.

16 Q. Okay. But with regard to the
17 February -- or excuse me -- the March 21st
18 negotiations, who brought that up for the union?

19 A. The union. I did.

20 Q. Okay. And who responded for the
21 employer?

22 A. Pat Hill.

23 Q. And what did Ms. Hill say?

24 A. They didn't have one.

25 Q. Are there any other items you recall

1 being discussed at the beginning of those
2 negotiations?

3 A. Not offhand.

4 Q. Is there a document that would help to
5 refresh your recollection?

6 A. My affidavit.

7 Q. I am going to direct you to paragraph
8 or to Page 5 on Paragraph 16 of your affidavit.
9 Actually 16 and 17.

10 A. Which paragraph?

11 Q. 16 and 17.

12 A. Uh-huh. Okay.

13 Q. Is your recollection now refreshed as
14 to the other items discussed at the beginning of
15 those negotiations?

16 A. Yes.

17 Q. And what items do you recall being
18 discussed?

19 A. We discussed the pension. The company
20 was adamant to keep the 401K. We indicated that
21 the bargaining unit employees who had voted to
22 have the union represent them really wanted the
23 decentral pension fund.

24 Q. After these initial discussions, did
25 either party declare a caucus?

1 A. Yes.

2 Q. Who declared the first caucus?

3 A. The company.

4 Q. How long did that caucus last?

5 A. Roughly an hour and a half.

6 Q. Did the parties return to the table
7 after that caucus?

8 A. Yes.

9 Q. What happened when the parties returned
10 to the table?

11 A. We continued our discussion as it
12 related to on-call status.

13 Q. Was there any discussion about wages?

14 A. We discussed a proposal that they put
15 together at 1.25 percent.

16 Q. Okay. And what do you recall from
17 those discussions?

18 A. I found that 1.25 percent was a
19 peculiar formula and asked where that may have
20 been used before or where they derived such a
21 formula from.

22 Q. And do you recall what the 1.25 wage
23 rate was for, what --

24 A. Well, if you got called into work in an
25 on-call setting, obviously the union had

1 proposed one and a half times the regular wage
2 rate and the company's counterproposal was 1.25.

3 Q. Was this discussed or referred to by
4 the parties as premium pay?

5 MS. HILL: Objection. Leading.

6 MR. WIESE: I am just trying to --

7 JUDGE ROSAS: I'll allow that.

8 THE WITNESS: Yes.

9 BY MR. WIESE:

10 Q. Okay. So turning away from the
11 discussions around premium pay, what other
12 discussions do you recall returning after that
13 caucus?

14 A. Asked for a counterproposal to our wage
15 proposal.

16 Q. What did the -- what response did the
17 company have to that?

18 A. After discussing the premium pay, we
19 were told we weren't going to discuss economics.

20 Q. Who stated this from the company?

21 A. Pat Hill.

22 Q. After this exchange, what do you recall
23 happening next at negotiations?

24 A. As I recall, the union took a caucus
25 ourselves.

1 Q. How long did that caucus last?

2 A. Roughly a half an hour.

3 Q. Did the parties take any lunch breaks
4 that day?

5 A. We did.

6 Q. How long was that lunch break?

7 A. Hour.

8 Q. And what happened after the parties
9 returned from the lunch break?

10 A. That's when we took our caucus to
11 discuss the on-call and tried to come up with a
12 modification which would be acceptable by both
13 parties.

14 Q. Oh, okay. And after the union returned
15 from its caucus that afternoon, what do you
16 recall being discussed at the table?

17 A. We discussed -- we continued the
18 discussion of on-call and we were still looking
19 for a counterproposal to our wage proposal.

20 Q. Is there anything else that you recall
21 coming up at the table at that time?

22 A. I don't recall.

23 Q. Is there a document that would refresh
24 your recollection?

25 A. My affidavit.

1 Q. I am going to direct your attention to
2 Page 6 and 7 of your affidavit Paragraph 22.
3 There is a blank page.

4 A. Which paragraph?

5 Q. Paragraph 22 which goes from the bottom
6 of Page 6 over to Page 7.

7 A. Okay.

8 Q. Is your recollection now refreshed as
9 to the other items that the parties discussed
10 after the lunch break?

11 A. Yes.

12 Q. Okay. And so what items do you recall
13 being discussed?

14 A. Again, we discussed wages, health fund,
15 pension.

16 Q. Okay. What else besides those terms?

17 A. The next meeting date.

18 Q. Okay. And what do you recall from the
19 discussions about the next meeting date?

20 A. They were very busy. The next date was
21 the end of April as I recall.

22 Q. Who stated that the company was very
23 busy?

24 A. Pat Hill on behalf of the company.

25 Q. And who offered the date at the end of

1 April?

2 A. Pat Hill.

3 Q. Are there any other discussions that
4 you can recall?

5 A. The meeting needed to come to an end at
6 2:00 o'clock because Jason Mayfield had to
7 leave.

8 Q. Who stated that?

9 A. Pat Hill.

10 Q. And after those discussions, do you
11 recall any discussions about substantive matters
12 that afternoon during the March 21st
13 negotiations?

14 A. Not offhand.

15 Q. What about with respect to dues
16 checkout?

17 A. We did talk about dues checkoff, yes.
18 Admin dues.

19 Q. And what do you recall from the
20 discussions around those topics?

21 A. The company was not willing to have
22 admin dues check off as part of the Collective
23 Bargaining Agreement.

24 Q. Who brought up dues checkoff?

25 A. The union.

1 Q. And who brought that up from the union?

2 A. Myself.

3 Q. What do you recall saying as you
4 brought that up?

5 A. Well, we have always had part of our
6 Collective Bargaining Agreement admin's dues
7 checkoff as part of all of our agreements.

8 Q. Who responded from the company?

9 A. Pat Hill.

10 Q. What did Ms. Hill say in response to
11 that?

12 A. That they weren't willing to do so for
13 this Collective Bargaining Agreement.

14 Q. Did she provide any explanation at that
15 time as to why they weren't willing to do so?

16 A. No. They just didn't want to
17 participate.

18 Q. And after the discussion about dues
19 checkoff, what do you recall the parties doing
20 next?

21 A. Well, we did ask, you know, there are
22 other locals that when they do have admin dues
23 checkoff, Local 324 is in Michigan, a market
24 very similar to the Wisconsin market. Local 150
25 in Illinois has dues checkoff a little different

1 market than the Wisconsin market.

2 Q. Okay. Did the company have any
3 response to those remarks that you can recall?

4 A. No.

5 Q. And after that exchange over dues
6 checkoff, what do you recall the parties doing
7 next?

8 A. The meeting came to an end at 2:00 per
9 the company's request.

10 Q. During the caucus that you discussed
11 earlier, did you see any members of the
12 employer's negotiating team?

13 A. I believe I seen Bo and Bryan working
14 the counter.

15 Q. How long did you see -- Strike that.
16 Were Bo and Bryan together working the
17 counter?

18 A. No.

19 Q. So you saw them separately working the
20 counter?

21 A. Well, they had separate workstations.

22 Q. Okay. Were they at their separate
23 workstations at the same time?

24 A. I don't recall.

25 Q. Okay. Where were you when you saw

1 Mr. Bogardus and Mr. Anderson?

2 A. I was in the negotiating room which was
3 our caucus room at the time of the caucuses.

4 Q. Do you recall how long you saw
5 Mr. Anderson at his computer?

6 A. I do not recall exactly.

7 Q. And what about Mr. Bogardus?

8 A. I don't recall exactly.

9 Q. Mr. West, I'd like to direct your
10 attention now to General Counsel Exhibit 14
11 which is going to be buried under that stack of
12 documents there.

13 JUDGE ROSAS: What number?

14 MR. WIESE: 14, one, four.

15 THE WITNESS: Yes.

16 BY MR. WIESE:

17 Q. Do you recognize this document?

18 A. I do.

19 Q. Okay. What is it?

20 A. These are my notes dated March 22,
21 2019.

22 Q. And what are these notes from?

23 A. These are the notes that I took during
24 the meeting that I had with our negotiating team
25 the next day in regard to the March 21st

1 negotiation session.

2 Q. Do you recall who was in attendance at
3 that meeting?

4 A. Myself, Steve Buffalo, Dan Marsolek and
5 Mike Ervin.

6 Q. What was the purpose of this March 22nd
7 meeting?

8 A. To try to come up with modifications to
9 our original proposal which would be acceptable
10 to both parties in an effort to move forward.

11 MR. WIESE: I'll offer General Counsel
12 Exhibit 14.

13 MS. HILL: Same question, any of the
14 handwriting on both pages of Exhibit 14 not
15 yours, sir?

16 THE WITNESS: No.

17 JUDGE ROSAS: Hold on one second.

18 MS. HILL: Go ahead.

19 JUDGE ROSAS: Any objection?

20 MS. HILL: No objection.

21 JUDGE ROSAS: Okay. So what's the
22 difference between 5J and General Counsel's 14?

23 MR. WIESE: Well, they are from
24 separate days so the negotiations were on
25 March 21st --

1 JUDGE ROSAS: General Counsel's
2 Exhibit 5J are the witness' notes from March 21,
3 2019, correct?

4 MR. WIESE: Right. Correct.

5 JUDGE ROSAS: So what is General
6 Counsel's 14?

7 MR. WIESE: General Counsel's --

8 THE WITNESS: These are my notes that I
9 took during the course of a meeting that we had
10 the day after the March 2 --

11 JUDGE ROSAS: So the meeting that you
12 had was on March 22nd when you generated these
13 notes at that time?

14 THE WITNESS: These are meeting notes
15 from my meeting with my negotiation team -- our
16 negotiating team.

17 JUDGE ROSAS: On March 22nd?

18 THE WITNESS: Right. The negotiation
19 was March 21st. I and Local 139's negotiating
20 team got together to try to come up with a
21 resolution.

22 JUDGE ROSAS: So this is a
23 strategizing?

24 THE WITNESS: Right.

25 JUDGE ROSAS: Okay. Go ahead. General

1 Counsel's 14 is received.

2 (GCX 14 received.)

3 BY MR. WIESE:

4 Q. So directing your attention to General
5 Counsel Exhibit 5K.

6 A. Okay.

7 Q. Going about a third of the way down the
8 page, the first page of the document it says
9 open wage proposal?

10 A. Yes.

11 Q. Do you see that?

12 A. I do.

13 Q. What is that note in reference to?

14 A. We still had not received a
15 counterproposal to our February 8th wage
16 proposal.

17 Q. Who from the union brought up that the
18 wage proposal was open?

19 A. I did.

20 Q. If you turn over to General Counsel
21 Exhibit 5L now --

22 A. Okay.

23 Q. -- looking at Page 1 of that
24 document --

25 A. Uh-huh.

1 Q. -- the notation refuse to answer
2 whether Illinois and then pay OT not in
3 Illinois, whose position was that?

4 A. The company wouldn't answer our
5 question. We were discussing adamantly the
6 union's proposal for two and a half after eight
7 and on Saturdays, double time on holidays. The
8 company adamantly refused.

9 Q. And who refused from the company?

10 A. Pat Hill on behalf of the company.

11 Q. And if you go down to the middle of
12 that page, the note says wage freeze and then
13 down to based off of economic downturn. Do you
14 see that block of notes?

15 A. I do.

16 Q. Whose position was that?

17 A. That was the company's position or
18 their counterproposal to our February 8th wage
19 proposal. They proposed a wage freeze and a
20 wage reopener for years two and three based on
21 what they believed to be an economic downturn.

22 Q. If you go down to the bottom of Page 3
23 of your notes --

24 A. Yes.

25 Q. -- so the block of notes -- actually,

1 the two notes at the very bottom. Pat refuses
2 to put left out articles in writing. What are
3 those left out articles in reference to?

4 A. I am failing to see where you are at.

5 Q. So I am --

6 A. Down at the bottom here.

7 Q. At the bottom of Page 3 of General
8 Counsel Exhibit 5L.

9 A. Yep.

10 Q. Are you there?

11 A. Yep.

12 Q. Okay. If you look at the very bottom
13 of that page the last two lines of the notes, do
14 you see those notes?

15 A. Uh-huh. Yes.

16 Q. Okay. And so the left out articles
17 there, what are those in reference to?

18 A. Well, we had a -- we had a signoff for
19 the tentatively agreed articles which we on a
20 regular basis continue to revisit things that we
21 believed were tentatively agreed upon and then
22 they weren't tentatively agreed upon to the
23 point where our original proposal had article
24 such and such from each one of the articles as
25 we went through the Collective Bargaining

1 Agreement as things were modified as we went
2 along.

3 The company's interpretation of those
4 articles became confused with the actual
5 original article designation that we had given
6 it so what we had tried to do on this particular
7 day is to create in its entirety article by
8 article everything that had been tentatively
9 agreed upon and we had such documents that we
10 wanted to sign off on so we could quit reviewing
11 the same things time and time again.

12 Q. Be with -- and with respect to these
13 notations here at the bottom of Page 3, are
14 those reflecting discussions regarding that
15 signoff document?

16 A. Well, the company was not willing to go
17 through the signoff document. They first
18 suggested that it wasn't necessary but then they
19 suggested that there were articles that we had
20 left out which in my opinion only solidified the
21 need for such a document to see where we have
22 been, what we've agreed upon, where we need to
23 go to get to its completion. Pat refused to put
24 in writing the left out articles that we were
25 suggesting for her having left out.

1 Q. And during those discussions that you
2 just referenced, who is stating the positions
3 for the company?

4 A. Pat Hill.

5 Q. Okay. If you go, we'll skip General
6 Counsel Exhibit 5M, but if you go to General
7 Counsel Exhibit 5N.

8 A. Yep.

9 Q. I'd like to draw your attention to
10 Page 2 of that document.

11 A. Okay.

12 Q. The note at the very top layoff
13 bargaining unit member for lack of work, who
14 stated or whose position was that?

15 A. Sunbelt's position was that they were
16 laying off the bargaining unit member for the
17 lack of work.

18 Q. And who stated that for Sunbelt?

19 A. Pat Hill.

20 MR. WIESE: No further questions at
21 this time.

22 JUDGE ROSAS: Charging Party?

23 MR. RYAN: I don't think I have any at
24 this point either, your Honor.

25 JUDGE ROSAS: Okay. Cross, do you need

1 a few minutes?

2 MS. HILL: Yes, sir. I need a few
3 minutes.

4 JUDGE ROSAS: Okay. Off the record.

5 (Whereupon, a short recess was
6 taken.)

7 JUDGE ROSAS: On the record. Cross
8 examination?

9 CROSS EXAMINATION

10 BY MS. HILL:

11 Q. Mr. West, there is -- I understand on
12 the table there is -- yes R1. If you would look
13 at that, sir.

14 A. Yes.

15 Q. Just to give you a little background to
16 it, if the judge permits, that was drawn by
17 Mr. Ervin. It's not to scale but is that an
18 accurate description or drawing of the
19 Franksville profit center where offices and the
20 conference room for negotiations are located?

21 A. Yes.

22 Q. Now, looking at the conference room
23 that was used for negotiations, is that also the
24 conference room where the union caucused?

25 A. Yes.

1 Q. All right. On the first day of
2 negotiations, did the union raise the issue of
3 where they were going to caucus, correct?

4 A. It was suggested by the company that we
5 take our caucus in our cars.

6 Q. Did -- my question, sir, was: Did the
7 union ask where they could caucus?

8 A. After it was apparent that you were
9 going to sit in the negotiations room for your
10 caucus, yes.

11 Q. Didn't we -- All right. At the point
12 that the discussion was held about the caucusing
13 for the union, Sunbelt had already asked for a
14 caucus and went to, if you look at the
15 description there, do you see the little office,
16 and that's Mr. Anderson's office?

17 A. Marked as SB caucus room?

18 Q. Yes.

19 A. Yes.

20 Q. And that's when we -- where we went for
21 our first caucus, correct?

22 A. No. That's not correct. You and your
23 company or the negotiating team intended to have
24 your caucus in the negotiations room and when it
25 was brought to light where should we take our

1 caucus, that's when it was presented we should
2 caucus in our cars.

3 Q. Did Sunbelt ask if any -- Did Sunbelt
4 or the union ask were there any other offices at
5 the profit center that could be used for
6 caucusing?

7 A. Not that I recall.

8 Q. And your notes that you have just
9 testified to based on direct examination, these
10 are not word for word, correct?

11 A. No. It's pretty hard to document
12 everything word for word while you are doing the
13 speaking as well.

14 Q. And speaking of speaking, who was the
15 union's spokesperson during negotiations?

16 A. Primarily it was me but Mike Ervin also
17 got involved quite a bit as well.

18 Q. And Mr. Buffalo spoke, too?

19 A. On occasion, he did.

20 Q. And Mr. McGowan spoke, too, correct?

21 A. He did.

22 Q. Who had authority -- I want to make
23 sure that this was clear on the record. Who had
24 authority to bind the union to proposals?

25 A. I did. Mike Ervin, Steve Buffalo,

1 Terry McGowan.

2 Q. So Mr. Marsolek had no authority to
3 bind?

4 A. Not necessarily but his opinion
5 mattered greatly.

6 Q. So he was involved at least in
7 preparing proposals to Sunbelt?

8 A. Absolutely.

9 Q. All right. It will help the court
10 reporter if you wait until I am finished with my
11 questions. I know I am a little slow, but it
12 might help for a nice clean record, okay? Thank
13 you.

14 A. Okay.

15 Q. The first day of negotiations was you
16 have identified who attended on behalf of
17 Sunbelt. Did Sunbelt identify who was going to
18 be the spokesperson for the negotiation team?

19 A. No. Not specifically. It was apparent
20 that you were going to be the spokesperson.

21 Q. Did Sunbelt identify who was going to
22 have the authority to bind Sunbelt to the
23 proposals?

24 A. No, not necessarily but you did the
25 speaking.

1 Q. All right. At some point during any of
2 the negotiations, did Sunbelt identify who had
3 the authority to bind Sunbelt to the proposal?

4 A. You did not.

5 Q. Okay.

6 A. Jason Mayfield was identified as the
7 vice president of regional directions but it
8 wasn't specifically -- it wasn't specifically
9 clarified that Jason would bind the company or
10 that Bo would bind the company to any of the
11 provisions. Jason was identified as the vice
12 president of the regional area.

13 Q. Did -- The union did not ask Mr.
14 Mayfield how many states he covered, did it?

15 A. I don't recall that we did.

16 Q. And the union did not ask Mr. Mayfield
17 how many profit centers he was responsible for?

18 A. Not that I recall.

19 Q. Now, looking at 5A?

20 A. Do you want me to look at 5A?

21 Q. Yes. Please. Page 3.

22 A. Okay.

23 Q. There is a what appears to be a star in
24 the left column?

25 A. Which page?

1 Q. Page 3 of 5. This is 5A, Page 3 of 5.

2 A. Yes.

3 Q. Do you see the star, sir?

4 A. I do.

5 Q. It indicates, if I read your writing
6 correctly, I suggest we don't negotiate via
7 E-mail. You instructed Mr. Ervin not to send an
8 electronic version of the union's list of TA'd
9 proposals, correct?

10 A. Not at this point.

11 Q. Not on this day. I am just saying at
12 any time during the time that the union and
13 Sunbelt were negotiating contracts?

14 A. Are we referring to what was written on
15 this proposal or this date?

16 Q. Later on, sir.

17 A. Okay. So you are asking me what is
18 written here, right?

19 Q. No, sir. Let me step back. On this
20 particular day, you informed Sunbelt that there
21 would be no proposals from the union or from
22 Sunbelt via E-mail, correct?

23 A. Yes. That's what the note says.

24 Q. And that was in response to Sunbelt
25 saying that it was the first time it had been

1 involved in negotiations with the union where
2 the union had not provided its first proposals
3 to Sunbelt prior to negotiation sessions,
4 correct?

5 A. You did raise that issue.

6 Q. And so at that point, the union was
7 refusing to have anything relating to
8 negotiations exchanged via E-mail, correct?

9 A. I pointed out that Local 139 was not
10 going to negotiate via E-mail, yes.

11 Q. And you would agree that providing
12 proposals via E-mail before a session might
13 speed up the amount of time spent in
14 negotiations, correct?

15 A. It might, as well as being timely on
16 showing up and not caucusing for an hour and a
17 half.

18 Q. But, sir, you never participated in
19 any -- in the caucus room with Sunbelt, correct?

20 A. No, I did not.

21 Q. Did the union require -- and I am
22 saying the union because you were the
23 spokesperson for the union. Did the union
24 require that every proposal from Sunbelt would
25 be in writing, correct?

1 A. That was our intention.

2 Q. And by in writing, you meant had to be
3 typed, correct?

4 A. No. Not necessarily.

5 Q. Did the union provide anything in
6 handwriting to Sunbelt?

7 A. We did, as negotiations moved forward.

8 Q. When?

9 A. Throughout the negotiations session.

10 Q. When?

11 A. I don't recall exactly.

12 Q. And with respect to the proposals that
13 Sunbelt gave the union, did Sunbelt attempt to
14 make a verbal proposal to the union?

15 A. Yes.

16 Q. And did the union refuse to listen to
17 any of those verbal proposals?

18 A. We didn't refuse but we asked that they
19 be put in writing so we could keep track of
20 where we were and what it was exactly that you
21 were proposing.

22 Q. In other words, the union would not
23 consider any verbal proposals at all, correct?

24 A. No. That's not correct.

25 Q. So for this negotiation session on the

1 1st, did you take any verbal proposals?

2 A. We listened.

3 Q. Did you accept any of them?

4 A. We asked for them in writing.

5 Q. During this first negotiation session,
6 did the union have copies of the plan documents
7 for Sunbelt's benefits, meaning the 401K, the
8 health insurance, the accident insurance, the --
9 and not just the plan documents but also the
10 summary plan documents?

11 A. I believe Mike had them, yes.

12 Q. And Sunbelt had given Mr. Ervin the all
13 of the plan documents, correct?

14 A. That's my understanding, yes.

15 Q. And did Sunbelt indicate that those
16 documents, the plan documents, the summary plan
17 documents, for all of Sunbelt's benefits would
18 be helpful for negotiations?

19 A. They did.

20 Q. And all of those were in writing,
21 correct?

22 A. Company policy, yes.

23 Q. And all of those were not sent via
24 E-mail, correct?

25 A. Not to my knowledge.

1 Q. Okay. Looking at this is 5B.

2 A. Yes.

3 Q. For this negotiation on June 26, 2018,
4 Sunbelt discussed or had a safety moment,
5 correct?

6 A. Yes.

7 Q. Did the union believe that the safety
8 moment was a waste of time?

9 A. No. Not in a job site scenario. I
10 felt it was unproductive for negotiation, but
11 it's what the company wanted so we went along
12 with it.

13 Q. Did Sunbelt indicate that it has a
14 safety moment for every meeting it holds if
15 there are four or more people?

16 A. That was your indication.

17 Q. It also indicates here near miss cards.
18 Was that a document, safety document, that
19 Sunbelt provided to the union?

20 A. Yes.

21 Q. Did Sunbelt also discuss the
22 requirement of employees to participate in
23 stretch and flex?

24 A. Yes.

25 Q. Did the union -- and that was a

1 discussion, correct?

2 A. It was.

3 Q. Was that to emphasize Sunbelt's -- how
4 Sunbelt believes that safety is a No. 1 priority
5 for it?

6 A. Yes.

7 Q. Was the discussion of the stretch and
8 flex and providing the near miss cards a waste
9 of the union's time during the negotiation
10 session?

11 A. No. We had indicated that stretch and
12 flex, Take 10 or near miss cards were something
13 that was employed on job sites pretty much
14 throughout our area.

15 Q. In different formats, though?

16 A. Yeah. But it's something that's
17 becoming commonplace within the industry and
18 certainly necessary.

19 Q. And did Sunbelt explain also that if an
20 employee failed to -- or refused to fill out the
21 Take 10 card or participate in the stretch and
22 flex that it could result in discipline?

23 A. Yes.

24 Q. And that is a topic that is necessary
25 for discussion with the union, correct?

1 A. It's company policy.

2 Q. And the union needed to know about it,
3 correct?

4 A. We needed to know about it, but it
5 wasn't necessarily a subject of the bargaining.

6 Q. All right. Because this was the first
7 time that 139 had negotiated any contract with
8 Sunbelt, correct?

9 A. Yes.

10 Q. And looking at your notes for 5A and
11 also for 5B, at this point at least, the union
12 didn't even know how to spell Sunbelt's name,
13 correct?

14 A. No.

15 Q. You have it with a capital B.

16 A. So that's not misspelled. It may be
17 incorrectly documented but it's not misspelled,
18 is it?

19 Q. Well, it is with a capital B and having
20 both of them connected like that, yes, sir.

21 A. Point taken.

22 Q. With respect to 5B where you have
23 substitute contractor to employer throughout
24 CBA. Do you see that, Page 1, 5B there is a
25 little star there?

1 A. Yes.

2 Q. And that's because the union and
3 their -- in their draft agreement to Sunbelt had
4 referenced employer as contractor, correct?

5 A. Correct.

6 Q. And Sunbelt usually is not a contractor
7 on any of the job sites, correct?

8 A. Correct.

9 Q. The Sunbelt had provided the union with
10 a GPS proposal in writing, correct?

11 A. Yes.

12 Q. And did Sunbelt discuss why it had the
13 GPS policy and also the anti GPS jamming device
14 policy?

15 A. Yes.

16 Q. And was Sunbelt's justification for
17 those policies, did the union believe it was a
18 waste of its negotiation time?

19 A. No. It's something that contractors
20 are utilizing more and more.

21 Q. Did Sunbelt explain that union members
22 were purchasing GPS jamming devices that were
23 illegal and that could result in a fine by the
24 FTC?

25 A. No. You indicated that you did not --

1 that you wanted to make a rule that it was
2 against company rules to utilize such a jamming
3 device.

4 Q. Okay. A rule meaning a provision of
5 the CBA?

6 A. Correct.

7 Q. And but did Sunbelt also indicate that
8 part of the reason was because the FTC could
9 fine the employer and the employee?

10 A. Yes. I'm sure that was part of the
11 discussion.

12 Q. Did Sunbelt also provide the union by
13 the time of this negotiation session a copy of
14 its handbook?

15 A. Yes.

16 Q. And this was the first time that the
17 union had seen the employee handbook for
18 Sunbelt, correct?

19 A. Yes.

20 Q. Sunbelt indicated during that -- during
21 the negotiation session that the handbook would
22 be updated, correct?

23 A. Yes.

24 Q. And Sunbelt informed the union that the
25 updated handbook would be provided to the union

1 in advance of it being presented to the members
2 for review, correct?

3 A. Yes.

4 Q. Was that discussion a waste of the
5 union's time?

6 A. No.

7 Q. During negotiations?

8 A. No.

9 Q. But on Page 2 of 7, if you look and I
10 am going to refer to the lines, the sixth line
11 down it starts with the word ask, could you
12 please explain what that meant?

13 A. Yeah. We were asking the employer to
14 concentrate on negotiating the Collective
15 Bargaining Agreement and not necessarily the
16 company policy which is not a subject of
17 bargaining.

18 Q. But those provisions that Sunbelt had
19 given you were to be included in the collective
20 bargaining agreement?

21 A. No. They weren't. They were going to
22 be company policy which the company has the
23 right to create whatever policy they desire as
24 many of our contractors or employers do, but
25 they are not necessarily a subject for

1 bargaining.

2 Q. Sir, didn't Sunbelt -- wasn't Sunbelt's
3 -- one of Sunbelt's proposals to include in the
4 Collective Bargaining Agreement, a provision
5 about GPS being installed on the company
6 vehicles and if they were disengaged, it would
7 result in discipline up to including termination
8 and that was to be in the Collective Bargaining
9 Agreement?

10 A. That may have been one of your
11 proposals, yes.

12 Q. And wasn't another proposal of
13 Sunbelt's to include in the Collective
14 Bargaining Agreement a provision that if an
15 employee used a jamming device for the GPS, that
16 it could result in discipline up to and
17 including termination?

18 A. I'm sure that was your discussion.

19 Q. With the union?

20 A. Yes. And I am sure our response was
21 that that could also be covered under what we
22 had proposed as union security or it could be
23 miss -- or considered as misconduct or gross
24 misconduct which would be just cause for
25 immediate termination.

1 Q. But, sir, sitting here today, do you
2 see that what you just relayed here?

3 A. No.

4 Q. And sitting here today, do you have any
5 independent knowledge of that kind of discussion
6 or information provided by the union?

7 A. Not necessarily, no.

8 Q. Did Sunbelt also provide in writing to
9 the union during their negotiation session a
10 copy of the paid time off policy also referred
11 to as PTO?

12 A. Yes.

13 Q. And that policy or that proposal was to
14 be included in the Collective Bargaining
15 Agreement, correct?

16 A. That was your proposal.

17 Q. And that proposal Sunbelt indicated to
18 the union was slightly different than the policy
19 that was in the handbook, correct?

20 A. I don't recall specifically.

21 Q. If you look at Page 3 of 7, this would
22 be I believe it's the seventh line down discuss
23 inaccuracy of GPS. Do you see that line, sir,
24 Page 3?

25 A. I am looking at Page 3 but I don't --

1 oh, yeah.

2 Q. Okay. Discuss inaccuracies of GPS
3 Sunbelt discussed that with the union, correct?

4 A. That was a concern that the union had
5 presented, yes.

6 Q. And who on Sunbelt's team discussed the
7 GPS for the vehicles?

8 A. I don't recall. I want to say it was
9 probably Bo, maybe Jason.

10 Q. And was it -- was the union told by
11 Sunbelt that there are reports that are issued
12 to management of Sunbelt that they can review
13 GPS?

14 A. Yes.

15 Q. And did Sunbelt indicate that it
16 realizes that sometimes GPS may indicate a
17 driver was speeding in order to pass an
18 individual?

19 A. Yes.

20 Q. And did Sunbelt indicate in those type
21 of situations where a driver was not speeding
22 for a long period of time, that that driver
23 would not be disciplined?

24 A. I don't recall specifically.

25 Q. But that discussion regarding GPS, was

1 that a waste of the union's time?

2 A. No.

3 Q. Did the union ask questions regarding
4 the use of GPS?

5 A. Yeah. I am sure we did.

6 Q. But sitting here today, sir, you don't
7 recall that, do you?

8 A. I know that we discussed a GPS in
9 pretty great detail.

10 Q. And do you recall who from the union's
11 team asked the questions regarding the GPS?

12 A. As I recall, it was Steve Buffalo,
13 myself and Mike Ervin.

14 Q. If you would look, I believe it's seven
15 lines down from discussing inaccuracy of GPS, it
16 looks to be four and then the letters T and A?

17 A. Uh-huh.

18 Q. Could you please explain what that is?

19 A. I couldn't tell you. I don't know. I
20 would imagine that is for TA that we came to
21 that day or by that point.

22 Q. Now, it also indicates two lines down
23 in the 3 and 4 a discussion regarding getting
24 documents in Word.

25 A. Yes.

1 Q. Okay. With respect to that, did the
2 Sunbelt negotiation team want to have the
3 documents in order to be able to make written
4 proposals, revisions to the union's proposals?

5 A. What they wanted to do was be able to
6 manipulate the proposal that we had sent, yes.

7 Q. You use the word manipulate. Did
8 Sunbelt use that word during negotiations, sir?

9 A. No.

10 Q. So that's just your opinion, sir?

11 A. Yes.

12 Q. Did Sunbelt want to move the
13 negotiations along by being able to at least
14 have a Word document that it could make
15 revisions to for later negotiations?

16 A. Yes.

17 Q. And Mr. -- and you report to Mr.
18 Buffalo, correct?

19 A. I do.

20 Q. And Mr. Buffalo told -- agreed to send
21 that document, correct?

22 A. Yes.

23 Q. But you disagreed about it, correct?

24 A. I did.

25 Q. What was the end result, sir?

1 A. Mr. Buffalo said to go ahead and send
2 the document in Word.

3 Q. And who sent that document?

4 A. Mike Ervin.

5 Q. We also discussed that day Article 5
6 but then, again, you wanted the proposal to be
7 in writing for that, correct? I am still going
8 down this same page, sir.

9 A. I am there. Yes.

10 Q. So Sunbelt could not verbally discuss
11 that one. It had to be in writing, correct?

12 A. We did discuss it verbally, but I did
13 ask for the proposal in writing.

14 Q. Article 9, this involved direct
15 deposit, correct?

16 A. Uh-huh.

17 Q. Verbal please for the purpose of the
18 court reporter.

19 A. Yes.

20 Q. Okay. Just a little background, she
21 can't take down uh-huh and uh-uh.

22 JUDGE ROSAS: Counsel, just ask me to
23 instruct the witness. I really don't want a
24 dialog. This is not a deposition. This is not
25 an arbitration mediation. You got a problem, we

1 can strike the testimony. Go ahead.

2 MS. HILL: Thank you, sir.

3 BY MS. HILL:

4 Q. Next is discussion of payday, correct,
5 that was biweekly or weekly?

6 A. Yes.

7 Q. And was there a resolution of that,
8 sir?

9 A. Not at that point.

10 Q. But later it was, correct?

11 A. Much later, yes.

12 Q. And then on Page 4 of 7, again, it asks
13 apparently Mr. Marsolek asks for all other
14 articles, good. What was that about, sir?

15 A. Dan asked about company rules.

16 Q. Safety rules?

17 A. Oh, okay. Yes. He asked if all the
18 other articles were good.

19 Q. Okay. And then, again, any of the
20 other proposals for Article 10, 9.3, 9.4, they
21 had to be in writing per the instruction from
22 the union, correct?

23 A. That's -- yes.

24 Q. Then there was a discussion regarding
25 the Gary Sinese program, also hiring of

1 veterans, correct?

2 A. Yes.

3 Q. Was that a waste of Sunbelt's and the
4 union's time during negotiations?

5 A. No.

6 Q. And Steve meaning Mr. Buffalo?

7 A. Yes.

8 Q. Asked to replace Article 10 with
9 Sunbelt's PTO policy, correct?

10 A. Yes.

11 Q. And then there is also a notation can't
12 grieve company policies. What was that with
13 respect to?

14 A. Well, because the company policies is
15 generally not part of the Collective Bargaining
16 Agreement. We can't necessarily grieve it
17 unless it becomes an unjust termination.

18 Q. But the provision that Sunbelt was
19 proposing for PTO that was going to be part of
20 the Collective Bargaining Agreement and could be
21 grieved if there was a misapplication of it,
22 correct?

23 A. Yes.

24 Q. The same day that Sunbelt and the union
25 negotiated the bulletin board provision,

1 correct?

2 A. Yes.

3 Q. Was that a waste of the union's
4 bargaining time?

5 A. No.

6 Q. Article 13, the parties negotiated the
7 language regarding tools, correct?

8 A. Yes.

9 Q. And the union's proposal regarding
10 tools and what would happen if tools were broken
11 or were stolen or lost differed from Sunbelt's
12 proposal because Sunbelt suggested having an
13 inventory with a photo of the equipment,
14 correct?

15 A. Restate that, please.

16 Q. Sure. Sunbelt's proposal regarding
17 tools and having an inventory, the union's
18 proposal required only a written inventory list
19 from the employee, correct?

20 A. No. Not necessarily.

21 Q. We'll get to that later then but
22 Sunbelt's proposal was to also permit the
23 employees to use their iPhone provided by the
24 company to take photos of their tools, correct,
25 and submit that?

1 A. Yes.

2 Q. Did the union have a -- think that that
3 discussion of how to keep an inventory was a
4 waste of its time?

5 A. No. Not at all.

6 Q. The Article 14, Management Rights?

7 A. Uh-huh. Yes.

8 Q. Pardon?

9 A. Yes.

10 Q. Was that a waste of the union's time to
11 discuss?

12 A. No.

13 Q. Article 15, Just Cause proposal from
14 Sunbelt was that a waste of the union's
15 negotiating time?

16 A. No.

17 Q. Were any of the proposals that Sunbelt
18 had provided to the union that day to be
19 provided to the union's attorney for review?

20 A. Yes.

21 Q. And which ones were that -- were they,
22 excuse me?

23 A. Management's Rights clause and Just
24 Cause.

25 Q. And I don't want you to identify any

1 discussions you had with the your attorney but
2 those provisions were ultimately approved,
3 correct?

4 A. Eventually, yes.

5 Q. And when you say eventually yes, did
6 the proposals -- did you come back with
7 counterproposals after the discussion with your
8 attorney?

9 A. Yes.

10 Q. And was -- and then were those two
11 proposals approved?

12 A. Yes.

13 Q. Article 13, the parties discussed the
14 company providing computer and diagnostic tools
15 for the members, correct?

16 A. Where are you at?

17 Q. Page 6, middle of the page.

18 A. Yep. I got it. Yes.

19 Q. Was that a waste of the union's time
20 for negotiations?

21 A. No.

22 Q. Just below that, you have bulletin
23 board suggest lunchroom and then Pat too busy
24 with HR com?

25 A. Uh-huh.

1 Q. What is that? What does that mean?

2 A. Well, the bulletin board was TA'd. It
3 was going to be placed in the laundry room. I'm
4 not sure exactly what you had going on.
5 Something with HR com. I don't recall.

6 Q. That same day there was a discussion
7 for a general or sort of a catchall provision
8 for the Collective Bargaining Agreement that was
9 going to be Article 18 that would include
10 something about uniforms, correct?

11 A. Yes.

12 Q. Was that a waste of the union's time to
13 negotiate that, sir?

14 A. No.

15 Q. Then there was also a discussion during
16 negotiations about the boot allowance, correct?

17 A. Yes.

18 Q. Was that a waste of the union's time?

19 A. No.

20 Q. Now, the agreement that the union
21 provided to Sunbelt, you said under direct
22 examination came from the 150, correct?

23 A. No. I didn't.

24 Q. Pardon? Well, excuse me. Part of it
25 came from the 150 and part of it came from the

1 324 in Michigan?

2 A. We tried to mirror the 324 agreement
3 more closely than the Local 150 agreement given
4 the similarities of the markets between Michigan
5 and Wisconsin as opposed to Wisconsin and
6 Illinois.

7 Q. Okay. Which of the Michigan locations?

8 A. I don't know.

9 Q. You didn't ask?

10 A. It was a statewide agreement.

11 Q. All right. When you got the -- did you
12 get a hard copy of the agreement?

13 A. Yes. Mike Ervin did.

14 Q. And did you look to see which of the
15 many agreements that Sunbelt has in Michigan
16 that particular one covered?

17 A. No. I did not.

18 Q. Did that particular agreement provide
19 for the Sunbelt employees to be under Sunbelt's
20 benefits rather than the union's benefits?

21 A. I don't recall.

22 Q. Did the union's proposal for the
23 initial draft agreement, did it have anything
24 from the 150 agreement?

25 A. Not specifically that I recall.

1 Q. And you know that the 150 agreement was
2 a contract that was inherited by Sunbelt when it
3 acquired the company, correct?

4 A. That's my understanding.

5 Q. So Sunbelt also and the union also
6 negotiated safety glasses for employees; is that
7 correct, sir?

8 A. Yes.

9 Q. Was that a waste of negotiating time?

10 A. No.

11 Q. On this particular day you also have a
12 notation in the middle of Page 7 of 7 of a
13 reference to the 150 PPE requirement. Was that
14 something that Sunbelt suggest proposed or was
15 that something that the union proposed?

16 A. No. That was something that you had
17 proposed.

18 Q. And did the union think that that was a
19 waste of the negotiating time?

20 A. No.

21 Q. It also indicates members comply with
22 site specific requirements. Was that a waste of
23 the union's bargaining time?

24 A. No.

25 Q. It also indicates a discussion of New

1 Hampshire. Do you recall what that was about,
2 sir?

3 A. Not specifically just that New
4 Hampshire had an agreement for Sunbelt.

5 Q. Was that a topic that was brought up by
6 Sunbelt or by the union?

7 A. I believe it was Sunbelt.

8 Q. Was that discussion a waste of the
9 union's negotiating time, sir?

10 A. No.

11 Q. If you would please turn to 5C, sir.

12 A. Yes.

13 Q. You have already said that you did not
14 include the names of the individuals for the two
15 negotiating teams, correct?

16 A. That is correct.

17 Q. And the 11 points that you have listed
18 here, those are all topics that the parties had
19 negotiated and some of them were TA'd and some
20 were still open, correct?

21 A. Correct.

22 Q. And this is a negotiation session that
23 Mr. McGowan attended?

24 A. Yes.

25 Q. There was as -- you testified there,

1 was a lot of discussion regarding FMLA and PTO,
2 correct?

3 A. Correct.

4 Q. And Sunbelt at some point during the
5 negotiation sessions provided the union with a
6 copy of an accommodation form, correct?

7 A. Yes.

8 Q. Was providing that form to the union a
9 waste of the union's time, sir?

10 A. No.

11 Q. There is a notation the middle of
12 Page 204, TA coercion?

13 A. Yes.

14 Q. Okay. Could you please explain that
15 notation there, sir?

16 A. We tentatively agreed something with
17 the word coercion in a just cause type of a
18 termination.

19 Q. Okay. So during this negotiation with
20 Mr. McGowan, articles were TA'd, correct?

21 A. Yes.

22 Q. And it indicates at 10:25 the 139
23 caucused, correct?

24 A. Correct.

25 Q. And then would the return of the union

1 occur based on the time frame on Page 3 of 4?

2 A. Could you state that again, please?

3 Q. Okay. It indicates that at 10:25,
4 middle of Page 2 of 4, Local 139 caucuses,
5 correct?

6 A. Uh-huh. Yes.

7 Q. And everything under this entry for
8 10:25, that's what was discussed during the
9 caucus?

10 A. Yes.

11 Q. Turning the page then the union called
12 back the company and was finishing with its
13 caucus at 1:05?

14 A. Yes.

15 Q. And it says company busy. Would you
16 please explain your notation there?

17 A. The company was busy at that moment.

18 Q. Doing what, sir?

19 A. I want to say that Bo and Bryan were
20 working the counter.

21 Q. The counter is identified on R1,
22 correct?

23 A. Yes.

24 Q. How many employees usually worked at
25 the counter?

1 A. When I was there, I would see two.

2 Q. And did Sunbelt at some point discuss
3 with the union having negotiations at the
4 union's Pewaukee office?

5 A. Not very detailed, but, yes.

6 Q. Okay. And what was Sunbelt's position
7 about the Pewaukee office?

8 A. They didn't want to negotiate there.

9 Q. And Sunbelt give a reason?

10 A. No. Not necessarily. We also
11 suggested meeting in a neutral location and that
12 was also denied.

13 Q. Okay. Let's start off with just the
14 union's -- the union hall. Did Sunbelt indicate
15 that the -- that it did not want to be there
16 because the profit center in Franksville was
17 very small and there may be times when Mr.
18 Anderson, the profit center manager, or Mr.
19 Bogardus, the district manager, might have to
20 work the counter?

21 A. Not specifically. I know the distance
22 was discussed.

23 Q. Because the distance to Pewaukee from
24 Franksville was approximately 33.4 miles,
25 correct?

1 A. Yes. It was the same distance for us
2 coming from Pewaukee to the Franksville
3 location?

4 Q. But it was the union's -- Strike that.
5 The union had decided to organize the
6 Franksville location, correct?

7 A. The bargaining unit employees and your
8 employees had decided to contact the union in an
9 effort to become more organized.

10 Q. And the union decided to facilitate
11 that, correct?

12 A. Yes.

13 Q. All right. All your points that you
14 see six bullet points discussed on Page 3 of 4,
15 these were all TA'd?

16 A. The ones that have TA next to them,
17 yes.

18 Q. There was another discussion regarding
19 felonious acts?

20 A. Yes.

21 Q. And the union's proposal was just
22 criminal?

23 A. That was one of the ideas we had, yes.

24 Q. And was that ultimately TA?

25 A. Eventually, yes.

1 Q. Does the -- Does local Union 139
2 require that all of its contracts be identical?

3 A. No.

4 Q. And by the way, did you say you also
5 received a copy of the 150 contract?

6 A. Mike Ervin did, yes.

7 Q. Okay. And did you see a difference
8 between the 150 contract and the 324 contract?

9 A. Yes.

10 Q. And Sunbelt during negotiations at some
11 point informed you that every profit center is
12 different?

13 A. Yes.

14 Q. Did Sunbelt inform you that the fleet
15 for each profit center, general tool profit
16 center, is different?

17 A. I don't recall.

18 Q. Did Sun -- and Sunbelt also told you
19 that the territory and the budget for each
20 profit center is different?

21 A. I don't recall that either.

22 Q. Did you provide your negotiation notes
23 to Mr. Ervin so he could prepare his affidavit
24 that was provided to the union -- excuse me --
25 to the NLRB?

1 A. Yes.

2 Q. And the reason for that was because Mr.
3 Ervin only had notes for one negotiation
4 session, correct?

5 MR. WIESE: Objection, your Honor.
6 Calls for speculation as to why Mr. Ervin --

7 JUDGE ROSAS: If you know.

8 BY MS. HILL:

9 Q. If you know.

10 A. Do you want me to --

11 JUDGE ROSAS: Do you know?

12 THE WITNESS: Mr. Ervin was taking his
13 own notes.

14 BY MS. HILL:

15 Q. Were they as comprehensive as your
16 notes, sir?

17 A. I don't know.

18 Q. You didn't look at his?

19 A. No.

20 Q. But did he ask for your notes in order
21 to prepare that affidavit or did you volunteer
22 to give them to him?

23 A. I volunteered to give them to him.

24 Q. All right. Looking at the last Page 4
25 of 4, does this accurately identify which

1 provisions had been TA'd during session No. 3
2 that was held on 8/8 of 2018?

3 A. If they have a TA next to them, yes,
4 that does indicate the ones that were
5 tentatively agreed upon.

6 Q. Okay. Now there are a couple of
7 indications on this page that indicate TA of
8 2013, correct? I am looking at Page 4 of 4.

9 A. Yes.

10 Q. Is that your handwriting there where it
11 says TA on 8/30/18?

12 A. 8/30/18, 8:00 a.m. would be the next
13 negotiation session.

14 Q. All right. And grievance procedure
15 Article 5 it says TA on 8/30/18?

16 A. No.

17 Q. It doesn't? What does it say there,
18 sir?

19 A. Where is Article 5?

20 Q. All right. If you look in the
21 left-hand column, it looks as if you have
22 written Art 5?

23 A. Yes.

24 Q. Okay. Grievance Procedure?

25 A. Okay. I see where it says that.

1 Q. Okay. So did you go back to your notes
2 for August 8th of 2018 and include when these
3 provisions were TA'd?

4 A. On 8/30/2018? I don't recall.

5 Q. And just above that same type of
6 notation, correct?

7 A. Yes.

8 Q. That is your handwriting, correct?

9 A. I don't recall.

10 Q. So you're not sure if on 8/30/18 is
11 your handwriting?

12 A. No. The TA is mine.

13 Q. I'm sorry. Pardon?

14 A. The TA is mine.

15 Q. How about on 8/30/18, is that your
16 handwriting?

17 A. I don't really recall.

18 Q. How about the next line?

19 A. I still don't recall.

20 Q. And the line after that?

21 A. I don't really recall.

22 Q. Looking down at Article 13, it
23 indicates TA on 8/8 of '18?

24 A. Yes.

25 Q. Is that your handwriting?

1 A. The proposal on table is mine.

2 Q. But you are not sure about the
3 handwriting?

4 A. I am not sure if TA on 8/18 is mine.

5 Q. So, sir, who else would have -- because
6 I had asked the question is all the handwriting
7 on these proposals yours and you testified that
8 it was.

9 A. Uh-huh.

10 Q. Who else?

11 A. These notes have been moved around a
12 little bit since this all began.

13 Q. Okay. So sitting here today, you do
14 not know who else had input on your notes here?

15 A. The negotiating team.

16 Q. All right. So everyone on the
17 negotiating team could have written that. Okay.
18 Is that correct?

19 A. It's possible. This was a
20 reproduction.

21 Q. Looking at 5D --

22 A. Where are we at?

23 Q. First page.

24 A. Page 1.

25 Q. Page 1. Page 1 of 3. 5D as in dog. D

1 as in dog.

2 A. Okay.

3 Q. Who else from the company attended?

4 A. Jason Mayfield, Bo Bogardus and Bryan
5 Anderson.

6 Q. Jason Mayfield?

7 A. Correct.

8 Q. For this negotiation, which articles
9 were TA'd?

10 A. Article 5 Grievance, TA three step.
11 Article 16, ruling 2 TA'd with primary to
12 lawful. Article 9, 9.3. Article 16.
13 Article 17.2. That's all I see.

14 Q. And would you agree that the grievance
15 procedure was an important article for the
16 Collective Bargaining Agreement?

17 A. Yes.

18 Q. And did the negotiation session reduce
19 the number of steps for the grievance down to
20 three rather than from a larger number?

21 A. Could you restate that, please?

22 Q. Did the negotiations result in fewer
23 steps for the grievance procedure?

24 A. Yes.

25 Q. Okay. This is going to be Exhibit 6B

1 as in boy.

2 A. Which one?

3 Q. B. 6B.

4 A. 6B.

5 JUDGE ROSAS: It follows 50.

6 THE WITNESS: I got it. I have it.

7 BY MS. HILL:

8 Q. Is the handwriting -- all the
9 handwriting on this document yours, sir?

10 A. Pardon?

11 Q. Is all the handwriting on this exhibit
12 yours?

13 A. Yes.

14 Q. You also testified that there was red
15 lining that occurred with this, correct?

16 A. Yes.

17 Q. And red lining is when -- is where some
18 of the wording has a line through the middle,
19 correct?

20 A. Either that or highlighted.

21 Q. In order to have red lining, did the
22 union receive an electronic version of this
23 proposal?

24 A. Yes.

25 Q. Did that red lining occur at the

1 union's union hall?

2 A. I believe it did.

3 Q. Were you involved in preparing the red
4 lining?

5 A. No.

6 Q. Page 1 of 6. There appears to be a
7 handwritten strike through. Second to the last
8 line on the first paragraph there.

9 A. Yes.

10 Q. What was it replaced with?

11 A. Bargaining unit member, BUM.

12 Q. Now this proposal was given to Sunbelt
13 on August 8th of 2018, was that your testimony?

14 A. I believe it was.

15 Q. So were all of the provisions that are
16 indicated with a TA, did those tentative
17 agreements occur on August 8th or was it
18 August 18th?

19 A. I believe it was August 18th. I'm not
20 sure.

21 Q. Looking at Page 6 of 6.

22 A. Yes.

23 Q. At the very top, is that your
24 handwriting?

25 A. It is not.

1 Q. Do you recognize it?

2 A. No.

3 Q. Part of -- Exhibit 5F, whose notes are
4 these, sir?

5 A. Give me one minute. These are my
6 notes.

7 Q. Okay. At the very top note Greg West
8 and Dan Marsolek absent from Session 5. That's
9 in your handwriting, correct?

10 A. Yes.

11 Q. It indicates about quarter of the way
12 down, pat announces Jason late. Another excuse
13 for delaying negotiations.

14 A. Yes.

15 Q. Did I indicate that Jason was late and
16 was delaying negotiations?

17 A. No. I wrote that in the note.

18 Q. Your interpretation?

19 A. Yes.

20 Q. The safety moment, again that -- did
21 you believe that that was a waste of negotiation
22 time?

23 A. No.

24 Q. Sunbelt provided the union with a drug
25 policy, correct, at this session?

1 A. Yes.

2 Q. And that was after the union had
3 requested it, correct?

4 A. Yes.

5 Q. And Sunbelt during this negotiation
6 session indicated that Sunbelt's customers might
7 have other drug testing and alcohol testing
8 requirements, correct?

9 A. Yes.

10 Q. And did that discussion of the drug
11 policy or the customers' drug policy was that a
12 waste of the union's time?

13 A. No.

14 Q. Now, in these notes, you don't indicate
15 Sunbelt's discussion regarding its customers'
16 drug policy, correct?

17 A. Pardon?

18 Q. In these notes of yours, sir --

19 A. Yes.

20 Q. -- for Exhibit 5F, do you see a
21 reference to the discussion regarding the
22 customers' requirements for drug and alcohol
23 testing?

24 A. No.

25 Q. And why is that?

1 A. I was writing and talking.

2 Q. So you were --

3 A. It's pretty hard to keep up.

4 Q. So you were talking about the
5 customers' requirements?

6 A. No. You were but that's not uncommon
7 for our industry that if you go to a location to
8 work, you may be subjected to any site specific
9 regulations as it relates to either drugs or
10 safety. I worked in the rental crane industry;
11 and I was subjected to multiple criteria so far
12 as certification and/or drug and alcohol
13 testing.

14 Q. During this negotiation session, the
15 parties discussed the safety quiz, correct?

16 A. Which session are you referring?

17 Q. This one reflected in 5F, sir.

18 A. Yes.

19 Q. Was that a waste of the negotiation
20 time?

21 A. No.

22 Q. And the union, in fact, asked for a
23 copy of the safety quiz, correct?

24 A. Yes.

25 Q. And Sunbelt provided it, correct?

1 A. Yes.

2 Q. On Page 2 of 4, Article 18.13, do you
3 recall what this discussion regarding the
4 article was about?

5 A. 18.13?

6 Q. Yes, sir. 18.13 or 18.13?

7 A. It had something to do with the
8 bargaining unit employees/employees being
9 questioned about something and Local 139 was
10 indicating that the union rep would need to be
11 present if so desired by the employee/bargaining
12 unit member.

13 Q. And was that discussion about one of
14 Sunbelt's proposals?

15 A. Yes.

16 Q. And was that a waste of the union's
17 negotiating time?

18 A. No.

19 Q. 18.14, you have a note there ask for
20 consistency with all providers, et cetera. What
21 did you mean by that, sir?

22 A. As we were discussing the need for the
23 bargaining unit employees possibly being
24 subjected to various site specific whether it's
25 drug testing or rules or whatever, we wanted to

1 make sure that our members working for Sunbelt
2 were being subjected to the same as any other
3 subcontractors or providers on that site
4 specifically but we wanted to make sure that
5 there was no special criteria that the Sunbelt
6 employees had to --

7 Q. And Sunbelt asked the union at that
8 point how was it supposed to make that
9 determination that Sunbelt wasn't being
10 discriminated against versus all the other
11 vendors?

12 A. The policy should be in writing, right.

13 Q. But you were referring to the vendors
14 doing the discrimination.

15 A. No. I was suggesting that the site
16 specific policy should be in writing to all
17 vendors and/or subcontractors.

18 Q. Was that discussion a waste of the
19 union's negotiating time?

20 A. No.

21 Q. There was also a discussion of FMLA,
22 correct?

23 A. Yes.

24 Q. Was that a waste of the union's
25 negotiating time?

1 A. No.

2 Q. On Page 3 of 4, there was a discussion
3 regarding the national training fund, correct?
4 It's about the fourth line down.

5 A. Yes.

6 Q. Okay. And Sunbelt discussed the type
7 of training that it provided to its employees,
8 correct?

9 A. Yes.

10 Q. And it also discussed the training that
11 its vendors provide to the Sunbelt employees,
12 correct?

13 A. Yes.

14 Q. Was that a waste of the union's
15 negotiating time?

16 A. No.

17 Q. And Article 24, again, Drug and
18 Alcohol, you have indicated that this was not a
19 waste of the negotiating time, correct?

20 A. Yes.

21 Q. Okay. This also indicates that the
22 company caucused from looking at probably the
23 bottom one quarter of the page, company caucused
24 from 10:12 to 10:59 and TA'd multiple provisions
25 with revisions, correct?

1 A. With changes, yes.

2 Q. With changes, correct?

3 A. Yes.

4 Q. But your notes don't reflect which
5 articles had been TA'd, correct?

6 A. No.

7 Q. All right. Back page. There was also
8 a discussion about religious accommodations,
9 correct?

10 A. Yes.

11 Q. Was that a waste of the union's time?

12 A. No.

13 Q. There was also a discussion of posting
14 jobs electronically and also on the union's
15 bulletin board. Was that a waste of the union's
16 time from negotiations?

17 A. No. No.

18 Q. Okay. Now 18.2 you have several notes
19 going down about for about a third of the way
20 down to about two-thirds of the way down
21 regarding boots. Was that a waste of the
22 union's negotiating time?

23 A. No.

24 Q. That provision -- this states Dan
25 refers to the IUOE, 324 contract was 125. \$125,

1 correct?

2 A. Yes.

3 Q. And there was a question about the \$50,

4 correct?

5 A. Yes.

6 Q. But the \$50 coupon was for Red Wings,

7 correct?

8 A. Yes.

9 Q. And for Michigan you didn't know what

10 if it was for a Red Wing coupon or for what,

11 correct?

12 A. Right.

13 Q. Eventually the parties did TA the boots

14 provision, correct?

15 A. Yes.

16 Q. All right. You may put 5F on your done

17 list. 5G, sir.

18 A. 5G?

19 Q. Yes, sir.

20 JUDGE ROSAS: All right. Let's take

21 five minutes.

22 MS. HILL: Thank you, sir.

23 (Whereupon, a short recess was

24 taken.)

25 JUDGE ROSAS: Okay. Back on.

1 BY MS. HILL:

2 Q. Okay. Sir, would you please look at
3 5G?

4 A. I am here.

5 Q. Thank you, sir. For this negotiation
6 session, Sunbelt provided the union with some
7 proposals, correct?

8 A. I see where we had discussed recently
9 or previously discussed revisions.

10 Q. For this particular session, had
11 Sunbelt provided the union with -- excuse me.
12 Let me strike that and put it this way:

13 For this particular negotiation session
14 December 10, 2018, Sunbelt provided the union
15 with proposals for the Collective Bargaining
16 Agreement, correct?

17 A. Do you have anything specific that you
18 are referring to?

19 Q. Looking at 17.1 on Page 3, 18.4 on
20 Page 3.

21 A. These actually look like articles or
22 provisions that we had already recently
23 discussed.

24 Q. But sitting here today, sir, you don't
25 know based on your notes whether a proposal had

1 been given to the union, correct?

2 A. No. Given the fact that it was denoted
3 by bullet point, this is something that would
4 have already been discussed.

5 Q. I'm sorry, sir? Explain that.

6 A. We would have already discussed it.
7 Article 9. TA'd biweekly. Biweekly pay and
8 then we continued --

9 Q. I'm sorry. Just a moment. Which page
10 are you looking at? I was looking at Page 3. I
11 had directed you to Page 3.

12 A. Yes. I am on Page 3. At the top of
13 the page it says Article 9, TA'd biweekly. Then
14 it goes on to 17.1, company counterproposal, so
15 that indicates that we had already discussed it.
16 17.5 --

17 Q. I'm sorry. How does it indicate that
18 you that already discussed it?

19 A. How can you counter propose something
20 that is being originally discussed at this
21 point?

22 Q. Sunbelt provided a counterproposal to
23 the union's proposal?

24 A. So then it had been discussed
25 previously, correct?

1 Q. But it was discussed again and the
2 union was provided with a proposal as basically
3 what you are calling a counterproposal?

4 A. Yeah. It was a counterproposal.

5 Q. That Sunbelt presented on this
6 particular negotiation session?

7 A. Was something that had already been
8 discussed, yes.

9 Q. But -- All right. Some proposals from
10 the union and from Sunbelt were discussed on
11 more than one negotiation session, correct?

12 A. Yes.

13 Q. Do you recall a negotiation session
14 that had to end early because you had to attend
15 a funeral?

16 A. No. I know of a negotiation session
17 that I did not attend because of a funeral.

18 Q. Do you recall a negotiation session
19 that had to end at about 12:25 p.m. with the
20 stated reason that you had to go to a funeral?

21 A. Not specifically but I wouldn't say
22 that it would be outside of character. We have
23 a lot of members who die along the way and we
24 try to attend each one of those member's
25 funerals.

1 Q. You also stated in direct examination
2 that Sunbelt had offered I think your testimony
3 was a date, it might have been more than one
4 date, 30 days from the negotiation session and
5 you stated we will take what we can get.

6 Now was that your statement during the
7 negotiation sessions -- session in which the
8 date was discussed or was that just your thought
9 process, sir?

10 A. No. We tried getting multiple dates
11 throughout the process and we were only offered
12 dates that generally were 30 days apart.

13 Q. Okay. For the particular date that you
14 were talking about, you stated this is when you
15 were discussing PTO and FMLA and you were asked
16 a direct question about the dates that had been
17 offered to -- by Sunbelt to the union and you
18 said that we will take what we can get.

19 Was that the statement you made to
20 Sunbelt during the negotiation sessions?

21 A. No.

22 Q. At the -- During the negotiation No. 7
23 that is reflected in your notes for 5G, did the
24 union request Sunbelt prepare a document that
25 included all of the TA'd provisions?

1 A. Yes.

2 Q. Did the union request that Sunbelt
3 prepare that document and E-mail it to the
4 union?

5 A. I don't recall that we asked for it to
6 be E-mailed specifically. We were trying to
7 facilitate the confusion that was being
8 generated from session to session as the result
9 of the original proposal offered by the union
10 and the article numbers for each one of the
11 provisions contained within and the references
12 that the company was making on behalf of their
13 consideration of the proposal.

14 Q. So did -- in answer to my question,
15 sir, did Sunbelt provide that document that had
16 all the TA'd provisions to the union via E-mail?

17 A. I don't recall if it was sent E-mail or
18 not.

19 Q. Was it provided to the union before the
20 next negotiation session?

21 A. I don't know that either.

22 Q. Do you recall looking at that document
23 prior to the negotiation session in January
24 of 2019?

25 A. I don't recall specifically.

1 Q. Did that document not only list the
2 TA'd provisions but also the open provisions?

3 A. I would imagine that it did, yes.

4 Q. When -- Was that document discussed at
5 the January negotiation session?

6 A. I don't know. Are we going to look at
7 those notes?

8 Q. Looking at the next set of notes, it
9 appears to be 5H, it was February of 2019. Do
10 you see that, sir?

11 A. I do.

12 Q. Okay. Was that document the list
13 prepared by Sunbelt of all the TA'd provisions
14 available to the union as of this negotiation
15 session?

16 A. No. Actually, I see here where it says
17 Pat Hill issues counterproposal and at 9:40
18 Local 139 had a proposal.

19 Q. So, sir, sitting here today, you don't
20 remember when that list of TA'd provisions was
21 provided to the union?

22 A. I would say that it was at this
23 meeting.

24 Q. But you don't know if it was at this
25 meeting or before this meeting?

1 A. I don't recall.

2 Q. Okay. About the middle of the Page 5H
3 it refers -- it says we started out bull
4 shitting about our safety members. What are you
5 referring to there, sir?

6 A. We had a safety moment and then the
7 company wanted to generate a conversation other
8 than bargaining about what we were doing with
9 safety and how we handle it and everything else.
10 So, again, we were diverting from the purpose of
11 negotiating and we were generating conversation.
12 That didn't really relate to the purpose of
13 negotiating an agreement.

14 Q. But wasn't safety one of the -- several
15 of provisions in the Collective Bargaining
16 Agreement?

17 A. Right, but it didn't relate to how our
18 members are dealing with safety out on other job
19 sites. I mean, we had provisions contained
20 within the Collective Bargaining Agreement, but
21 the conversation generated by the company which
22 went on for, I don't know, 10 or 15 minutes
23 which was taken from the valuable bargaining
24 time was more about what are we doing and how
25 are we handling different things at different

1 levels and, again, it was not towards the
2 purpose of negotiating the agreement.

3 Q. Well, right below about the middle of
4 the page you have a 9:34 begin safety moment.

5 A. Uh-huh.

6 Q. Discuss cold weather hazards.

7 A. Yep.

8 Q. Now was that appropriate for a
9 discussion February of 2019?

10 A. Yes.

11 Q. And didn't the union and Sunbelt
12 discuss the type of cold weather uniforms that
13 Sunbelt would provide to the union members?

14 A. I am sure that we did.

15 Q. Sitting here today, sir, you don't
16 remember that, correct?

17 A. No. No. Not specifically.

18 Q. And your notes here failed to identify
19 that discussion, correct?

20 A. Yes.

21 Q. And, again, here you have that Sunbelt
22 provided the union with the safety quizzes,
23 correct?

24 A. Yes.

25 Q. And both the union requested some

1 counterproposals and that Sunbelt provided
2 counterproposals but your notes don't reflect
3 what those proposals were, correct?

4 A. What specifically are you referring?

5 Q. If you look at the bottom of this page
6 of this exhibit --

7 A. Page 1.

8 Q. -- Page 1 of 6, 5H the last handwriting
9 I believe it's yours.

10 A. Yes.

11 Q. I ask for counterproposals, correct,
12 meaning you, Mr. West, correct?

13 A. Right.

14 Q. And then on the next page, it indicates
15 that counterproposals were issued; is that
16 correct?

17 A. That is correct.

18 Q. So Sunbelt did what the union, you,
19 wanted, correct?

20 A. What the union wanted, yes.

21 Q. You indicate about a quarter of the way
22 down 10:25, company socialized with vendor while
23 we wait. Could you please explain what you mean
24 in those notes?

25 A. One of your vendors was in the office

1 and the negotiating team was socializing with
2 that individual.

3 Q. All right. First, who was the vendor?

4 A. I don't know.

5 Q. How do you know it was a vendor?

6 A. Because you indicated it when you came
7 in the meeting.

8 Q. Okay. And so who on the negotiating
9 team was talking to the vendor?

10 A. The whole negotiating team was standing
11 there.

12 Q. All right. And you said socializing
13 but the statement made by Sunbelt about the
14 vendor was not socializing, correct?

15 A. Not specifically.

16 Q. The statement was that the vendor had a
17 question about something business related,
18 correct?

19 A. No. Not specifically.

20 Q. But you don't remember and your notes
21 don't reflect it, correct?

22 A. My notes don't reflect it; that is
23 correct.

24 Q. With respect to you testified regarding
25 dues deductions. Admin dues deductions. During

1 the discussions, any of the discussion regarding
2 dues deductions, did Sunbelt explain that it had
3 other contracts that did not provide for the
4 company handling the dues deduction?

5 A. Yes.

6 Q. Did Sunbelt indicate that there was a
7 contract in the St. Louis area that did not
8 require Sunbelt to handle dues deductions?

9 A. Yes.

10 Q. Did Sunbelt also indicate that it had a
11 contract on the east coast with another union
12 that did not require Sunbelt to handle dues
13 deductions?

14 A. I don't recall specifically the east
15 coast but Sunbelt had indicated that there were
16 other locations where dues deduction was not
17 part of the Collective Bargaining Agreement.

18 Q. And did Sunbelt also indicate that
19 there is a cost associated for all of the
20 deductions that must be made pursuant to a union
21 contract?

22 A. Yes.

23 Q. And were those reasons given to -- that
24 Sunbelt gave to the union regarding dues
25 deduction, was that a waste of negotiating time?

1 A. No.

2 Q. With respect to the pension that was
3 proposed by the union --

4 A. Uh-huh. Yes.

5 Q. -- and I believe you have there are
6 some notes on page -- if you are looking Page 3
7 of 6.

8 A. Yes.

9 Q. Okay. Was there a discussion regarding
10 the pension plan that the 324 had in Michigan
11 that was to use the expression in serious
12 underfunding?

13 A. Yes. There was also a discussion in
14 regards to the solidity or the strength of
15 Local 139 and its central pension.

16 MS. HILL: And, your Honor, if you
17 could instruct the witness just to answer my
18 question.

19 JUDGE ROSAS: Move to strike when it's
20 not responsive. When counsel asks you a
21 question that seeks to elicit yes or no, try to
22 answer it yes or no. It may not be phrased the
23 way you wanted to which means your attorneys
24 will have their chance and do it, this way we
25 can move on. So subject to being stricken, it's

1 not technically a response. You don't have to
2 volunteer or help anybody. Go ahead.

3 MS. HILL: Thank you.

4 BY MS. HILL:

5 Q. With respect to the 139's pension plan,
6 did Sunbelt respond to the suggestion that it
7 was in good financial shape, that it might be in
8 good shape today but it might not be in the
9 future?

10 A. Yes.

11 Q. Was that discussion regarding the
12 pension plan a waste of the union's negotiating
13 time?

14 A. No.

15 Q. The articles that you have referenced
16 on Pages 3 of 6 and 4 of 6, these were based on
17 proposals from Sunbelt?

18 A. Yes.

19 Q. Looking at Page 4 of 6, almost at the
20 middle of the page, there is a reference to
21 Article 21.2 Overtime.

22 A. Yes.

23 Q. And Mr. Ervin discussed the history of
24 Hay Market Square and the Bay View Massacre at
25 this time, correct?

1 A. Yes.

2 Q. Was that necessary for the negotiation
3 session, sir?

4 A. Yes.

5 Q. Why?

6 A. To give the history of why overtime or
7 time and a half is important.

8 Q. A history lesson in the middle of
9 negotiations that you think are not moving along
10 fast enough is appropriate?

11 A. Yes.

12 Q. If you would look at the same page,
13 there is a star Article 21.6, counter propose.
14 Could you explain what that meant? Was that
15 from the union or was that from Sunbelt?

16 A. This is where we were discussing I
17 believe it was on-call or shift times and this
18 was for on-call discussing how many hours would
19 be paid in a five-day period for being in an
20 on-call status.

21 Q. And looking at the contracts for the
22 150 and the whichever 324 contract you received,
23 they differed on on-call, correct?

24 A. Yes.

25 Q. And so the union was aware of the fact

1 that Sunbelt did not have identical contracts
2 for all of the unions, correct?

3 A. Yes.

4 Q. Now, at the very bottom of this page,
5 could you please indicate what was cut off there
6 at the very bottom?

7 A. Yeah. At 12:16 I denote that the
8 company is still caucusing while Bo is attending
9 his day-to-day activities or duties.

10 Q. Duties. Page 5 of 6 there is a star
11 there for Article 15.1.

12 A. Yes.

13 Q. Are you asking Sunbelt to resubmit
14 original proposal or is the union stating its
15 resubmitting?

16 A. I am stating that we are resubmitting
17 our original proposal.

18 Q. The last page of this exhibit, you
19 indicate me and Dan point out no movement on
20 company's behalf. With respect to what?

21 A. The resubmitted proposals.

22 Q. Which were?

23 A. Wages, benefits, pension, NTF, time and
24 a half.

25 Q. And but at some point Sunbelt did

1 provide some alternative -- some
2 counterproposals for the overtime, correct, and
3 for the on-call?

4 A. Yes.

5 Q. Was there a negotiation at which the
6 union provided Sunbelt with a list of what it
7 considered to be the open, you know, nonTA'd
8 provisions of the Collective Bargaining
9 Agreement?

10 A. Yes.

11 Q. And did Mr. Ervin provide that to
12 Sunbelt?

13 A. I believe he did.

14 Q. And Sunbelt caucused after it received
15 that?

16 A. Yes.

17 Q. And was that the session in which I
18 went back to just by myself to the -- to your
19 conference room to ask for clarification on a
20 couple of points?

21 A. That was the session where we were
22 working off of your revision of the TA'd items,
23 yes.

24 Q. So you are referring to the long list
25 of TA provision and open provisions, correct?

1 A. We were looking at your revision of our
2 original proposal, yes.

3 Q. Okay. But now I'm referring to just
4 when the union had provided a list of what it
5 considered to be the open provisions.

6 A. Yes.

7 Q. All right. Was there a question about
8 whether that list of open provisions was
9 accurate?

10 A. Yes.

11 Q. Did Sunbelt raise a question?

12 A. Yes.

13 Q. And Sunbelt during negotiations pointed
14 out that several of the allegedly open
15 provisions had already been TA'd, correct?

16 A. Sunbelt indicated that they felt that
17 there was some of the provisions not included.

18 Q. Did Sunbelt also -- and I am going to
19 move to strike your response just now as
20 nonresponsive to my question, sir.

21 JUDGE ROSAS: Stricken.

22 BY MS. HILL:

23 Q. Did Sunbelt indicate to the union
24 during the negotiation session that some of the
25 allegedly open provisions had actually been

1 TA'd?

2 A. Yes.

3 Q. Thank you, sir. If you would please
4 put 5H to the side, sir, and pick up 5I.

5 A. I have it.

6 Q. Thank you. And this was a second
7 session for February of 2019, sir?

8 A. Yes.

9 Q. And this one Mr. McGowan again
10 attended, correct?

11 A. Yes.

12 Q. And what was the purpose of his
13 attending this?

14 A. He wanted to be involved.

15 Q. To do what?

16 A. He is the business manager.

17 Q. But did he make any of the proposals?

18 A. Yes.

19 Q. Which proposals?

20 A. Discussion about the dues checkoff.

21 Q. And did he also say that the union was
22 going to go to the labor board?

23 A. Yes.

24 Q. Now, looking at Page 2 of 6, sir,
25 indicates -- well, let's see. Near the fourth

1 line down from the top, no give on your side.

2 What's the -- what do you have after that?

3 A. No give on your side, I have denoted
4 Illinois/Michigan agreements. Treating
5 Local 139 like crap.

6 Q. But Sunbelt provided for -- at least
7 for the boots an alternative to what was being
8 provided to Michigan in their Collective
9 Bargaining Agreement, correct?

10 A. Yes.

11 Q. And was there absolutely no give on
12 Sunbelt's side for any of the provisions?

13 A. Not towards the union's consideration,
14 no.

15 Q. All right. All right. Which
16 proposals, specific proposals, are you saying
17 Sunbelt did not agree with?

18 A. You pointed out the boots, Local 324
19 was getting \$125 for a boot allowance.
20 Local 139 was offered \$50.

21 Q. But that was negotiable, correct?

22 A. Yes.

23 Q. And it did go up, correct?

24 A. Pardon?

25 Q. The dollar amount did go up, correct?

1 A. No. Actually, it went down.

2 Q. Excuse me, sir. It went from \$50 to
3 what?

4 A. I don't recall.

5 Q. Then with respect and for boots also
6 Sunbelt proposed that the company would provide
7 the members, the bargaining unit members, with
8 any of the boots that were available online,
9 correct?

10 A. Yes.

11 Q. Free of charge, correct?

12 A. Yes.

13 Q. And if there was a defect, it would --
14 the company would get it replaced, correct?

15 A. Yes.

16 Q. Okay. Further down about a third of
17 the way down it says contends ULP. What are you
18 referring to there?

19 A. I'm not sure. I notice that we are
20 still waiting for the wages.

21 Q. Okay. Do you recall any discussion
22 regarding the proposal that Sunbelt gave the
23 union of all of the TA'd provisions?

24 A. Yes.

25 Q. And during that discussion, was the

1 union informed that some of the articles from
2 the union's proposed Collective Bargaining
3 Agreement had been deleted because they had been
4 moved around into other articles?

5 A. Yes.

6 Q. And did Sunbelt explain that that
7 resulted in a change of the article numbers?

8 A. Yes.

9 Q. Did Sunbelt also explain that it was
10 not including the page numbers or the article
11 numbers in the table of contents until the
12 entire Collective Bargaining Agreement was
13 finalized?

14 A. Yes.

15 Q. Did you hear any Sunbelt employee state
16 that it had no intention of reaching a
17 Collective Bargaining Agreement with the 139?

18 A. No.

19 Q. Now this was the negotiation session in
20 which I by myself went into the conference room
21 where you and the rest of the union negotiating
22 team was located, correct?

23 A. Yes.

24 Q. To discuss some of the provisions on
25 the union's proposal, correct?

1 A. At this point, we were working off of
2 your revision of the original proposal, yes.

3 Q. But also -- but the union was working
4 off of its own version of the Collective
5 Bargaining Agreement, correct?

6 A. No. We were working off of your
7 revision.

8 Q. This also indicates on 5/6 that the
9 negotiations reconvened at 1:35; is that
10 correct?

11 A. Where are you at?

12 Q. Page 5 of 6.

13 A. Yes.

14 Q. Okay. Review company policy of what?

15 A. I am not sure at this point.

16 Q. 15.5 about four lines down in entirety.

17 A. Yes.

18 Q. What is meant by that?

19 A. Article 15 of your revision of the
20 proposal, Article 15.5.

21 Q. In entirety, is that meaning TA'd or
22 not TA'd?

23 A. I'm not sure.

24 Q. So you don't know what in entirety
25 meant?

1 A. Well, I know what entirety meant.
2 There was -- in 15.5, as I recall, there were
3 multiple subsections to it so requiring A, B, C,
4 whatever.

5 Q. Decline Article 17. That's the union
6 declining Sunbelt's proposal?

7 A. Yes.

8 Q. And that's because it's inconsistent
9 with 2,000 other contractors, correct?

10 A. Yes.

11 Q. But Sunbelt was not a contractor,
12 correct?

13 A. Per your interpretation, yes.

14 Q. 18.1, so the union verbally agreed to
15 vacation?

16 A. That's what it indicates, yes.

17 Q. Okay. But holiday not denied. What do
18 you mean by that, sir?

19 A. I think we were discussing how a
20 holiday would be paid in regards to a vacation.
21 If I take my vacation during the 4th of July
22 week or the Christmas week, would I still get my
23 vacation time, would that go towards my PTO
24 time, so the discussion was revolving around if
25 I take my vacation or my PTO, do I lose part of

1 my PTO or do I lose my vacation or not.

2 Q. So based on that discussion, that
3 provision was TA'd, correct?

4 A. Yes.

5 Q. And that provision does the union
6 consider that to be an important provision for
7 the Collective Bargaining Agreement?

8 A. Yes.

9 Q. So the discussion regarding that
10 provision was not a waste of the union's time,
11 correct?

12 A. Correct.

13 Q. And the -- you have further down here
14 is that 18.5 TA'd?

15 A. Yes.

16 Q. And another provision is TA'd right
17 after that; is that correct?

18 A. Yes. You'll notice that there is
19 20.5/18.5 and that was TA'd and then you'll
20 notice that underneath that is 18.6/20.6, again
21 it was TA'd. This is an indication as to the
22 differences between the two original proposals.
23 The original proposal from Local 139 and your
24 revision of where we were at.

25 Q. What you call the revision which was a

1 request by the union to prepare a list of all
2 the TA'd provisions but also indicate which ones
3 were open, correct?

4 A. Yes.

5 Q. So the parties were comparing the
6 union's original version to the requested list
7 of TA'd provisions, correct?

8 A. Yes.

9 Q. The last page of this exhibit, it
10 indicates at the very bottom Pat Hill announces
11 she can't respond to our proposal. Which
12 proposal is that?

13 A. Our wage proposal.

14 Q. But where -- how do you make -- how do
15 you know that's what it was about?

16 A. Because it says no wage
17 counterproposal.

18 Q. But that's before the company caucus,
19 correct?

20 A. Right.

21 Q. And there were other proposals that
22 were also discussed above that?

23 A. About what?

24 Q. Well, looking here, the overtime
25 proposal, the lunch, you know, working through

1 lunch proposal, the two, 10-minute breaks, now
2 those were -- two were TA'd, correct? 19.3,
3 19.4?

4 A. Yes.

5 Q. 19.5 was still open, correct?

6 A. Correct.

7 Q. 19.6 was still open, correct?

8 A. Correct.

9 Q. 19.7, and 20.5 were TA'd, correct?

10 A. Yes.

11 Q. So there were several proposals that
12 were not responded to at the conclusion of that
13 negotiation session, correct?

14 A. There were some that were still open
15 including the wage counterproposal, yes.

16 Q. Right. So it wasn't as you had stated
17 earlier just the wage proposal. There were
18 other proposals, correct?

19 A. There were still open ended items, yes.

20 Q. Do you know who had to type all the
21 written proposals that the union demanded from
22 Sunbelt?

23 A. I don't know for a fact, but I assume
24 that it was you, Pat Hill.

25 Q. All right. Would you put 5I to the --

1 over on the completed side and now go to 5J?

2 A. Yes.

3 Q. Was this the negotiation session in
4 which Mr. Buffalo indicated that he did not have
5 the February 21, 2019 proposal even though the
6 union had -- the remaining members of the union
7 had it?

8 A. I don't recall.

9 Q. For this, if you would please look at
10 your notes here, did Sunbelt provide the union
11 with counterproposals during this session?

12 A. We discussed open ended proposal, yes.

13 Q. Was holiday pay negotiated between the
14 parties?

15 A. Yes.

16 Q. And would you consider that to be an
17 important part of the Collective Bargaining
18 Agreement?

19 A. Yes.

20 Q. And the parties negotiated daily
21 overtime, correct?

22 A. We discussed it, yes.

23 Q. All right. Did you negotiate it, sir?

24 A. Yes.

25 Q. And did Sunbelt and the union also

1 negotiate overtime rate for weekends and
2 holidays?

3 A. Yes.

4 Q. And you would consider that -- those
5 negotiations to be an important part of the
6 Collective Bargaining Agreement, correct?

7 A. Yes.

8 Q. You state at the bottom of Page 1 of 6
9 argue pension fluidity. Could you explain that,
10 sir?

11 A. Yeah. We were discussing the central
12 pension fund and its strength financially.

13 Q. And that was from the union discussing
14 it, correct?

15 A. Yes.

16 Q. But the specifics of it, you don't
17 remember?

18 A. So far as what?

19 Q. What you said.

20 A. Yeah. We discussed how financially
21 solvent central pension fund was.

22 Q. Sir, you did not provide any specifics
23 of how sound the financial situation was for the
24 139's pension, correct?

25 A. Actually, we did.

1 Q. Okay. Then, sir, as I asked a couple
2 questions before, what specifically did you say?

3 A. It was discussed that the central
4 pension fund had -- was 96 percent funded.

5 Q. And that was it?

6 A. I'm not sure.

7 Q. Looking at Page 2 of 6, the parties
8 continued to discuss on-call pay, correct?

9 A. Where do you see that?

10 Q. Page 2 of 6.

11 A. Yeah.

12 Q. Approximately the start on the fourth
13 line down to about almost the middle of the
14 page.

15 A. Yeah.

16 Q. Okay. So this was still an outstanding
17 provision of the Collective Bargaining Agreement
18 and the parties were still negotiating, correct?

19 A. Yes.

20 Q. Sunbelt caucused, came back and
21 provided all of the counterproposals that you
22 see -- that you have written in from about
23 middle of the page down to the end, correct?

24 A. Yes.

25 Q. Then the union caucused, correct?

1 A. Yes.

2 Q. For how long?

3 A. Roughly a half an hour.

4 Q. And would you please point out which
5 lines and pages that is indicated?

6 A. Well, we have the meeting reconvening
7 at 10:52. The company came back at 10:25 from
8 their caucus so between those two timeframes is
9 when we took our caucus.

10 Q. Okay. So I'm looking at Page 3 of 6,
11 so about a third of the way down it says 139
12 counters.

13 A. Yes.

14 Q. And those were the counter to the
15 proposals that Sunbelt had just provided to them
16 starting at 10:25, correct?

17 A. Correct.

18 Q. So you did not caucus to come up with
19 those counterproposals?

20 A. Yeah. I believe we did.

21 Q. After Sunbelt came back with its
22 proposals?

23 A. What do you mean?

24 Q. Well, okay. Sunbelt gave you
25 proposals.

1 A. Yeah.

2 Q. And are you saying the union did not
3 caucus and just automatically had
4 counterproposals to those?

5 A. No. It suggests here that the meeting
6 reconvened at 10:52.

7 Q. So the union caucused from 10:25 to
8 10:52 and what is above that line of 10:52, that
9 is what was discussed in your caucus?

10 A. Yeah. I would say that would be an
11 accurate statement.

12 Q. And those same provisions were then
13 provided to Sunbelt, correct?

14 A. Correct.

15 Q. You have a note here about the fifth
16 line from the bottom, Sunbelt questions me about
17 escalation statement. Could you please explain
18 that?

19 A. Yeah. When we were discussing being
20 tired of the stall tactics, obviously there are
21 protected activities that could be engaged by
22 the union in an effort to rethink the law and
23 that would be what I would consider to be the
24 escalated activity statement.

25 THE REPORTER: I'm sorry, your Honor.

1 Could I have that repeated, please?

2 THE WITNESS: So at the beginning of
3 the negotiation session, we indicate that we are
4 tired of the stall tactics. We indicated also
5 that we wouldn't want to see Local 139 have to
6 engage in escalated activities.

7 BY MS. HILL:

8 Q. Escalated activities meaning what, sir?
9 You identified those during negotiations,
10 correct?

11 A. Well, obviously per the Act we are able
12 to banner or picket if we choose.

13 MS. HILL: Okay. Move to strike his
14 statement.

15 JUDGE ROSAS: He is going to have to
16 repeat.

17 THE WITNESS: Restate the same way I
18 said it?

19 JUDGE ROSAS: Yes. What did you say?

20 THE WITNESS: I said we could picket or
21 banner.

22 JUDGE ROSAS: And what was the
23 question?

24 BY MS. HILL:

25 Q. My question was: Did you identify what

1 you were going to be doing?

2 JUDGE ROSAS: Yes or no?

3 THE WITNESS: Yes.

4 BY MS. HILL:

5 Q. What did you tell Sunbelt that the
6 union was going to be doing.

7 A. That we could either banner or picket
8 which was protected activity.

9 Q. Did you say and it's protected
10 activity?

11 A. Yes. That's what my notes indicated.
12 Bottom of the page.

13 Q. So everything -- but it says I
14 explained protected activities. It doesn't say
15 and I identified picketing and bannering and
16 stated it was protected activities.

17 A. Okay.

18 Q. Correct?

19 A. If you say so.

20 Q. So sitting here today, sir, do you even
21 remember what you identified as protected
22 activities during that negotiation session?

23 A. Bannering and picketing.

24 Q. Looking at Page 4 of 6, Sunbelt again
25 made counterproposals, correct, for 18.4?

1 A. Yes.

2 Q. And also a guarantee in addition to
3 eight hours of holiday pay, correct?

4 A. Yes.

5 Q. Then 19.5, Sunbelt made a proposal
6 regarding that also, correct?

7 A. Yes.

8 Q. On the back of this is 6 of 6 for 5J,
9 it appears your notes reflect some sort of
10 discussion regarding administrative dues, the
11 NTF, health fund, the pension, CPF and wages.
12 Did you explain what CPF was?

13 A. Yes.

14 Q. And what did you explain CPF was?

15 A. Central pension fund.

16 Q. Did Sunbelt at this point discuss that
17 it would not contribute to the national training
18 fund because it supplied adequate training to
19 its employees including the bargain unit
20 members?

21 A. Yes.

22 Q. During this session, was it explained
23 to the union that Bo had to work the rental
24 counter because it was -- the company was short
25 on staff?

1 A. Yes.

2 Q. And was it -- sitting here today, you
3 don't know how much walk-in business Sunbelt
4 gets?

5 A. No.

6 Q. With respect to working the counter, do
7 you know what the employees who worked the
8 counter do?

9 A. No.

10 Q. Do you know if the people working the
11 counter handle orders from customers?

12 A. I assume that they do.

13 Q. And would you say getting a customer's
14 orders is important for keeping the business
15 going at the Franksville profit center for all
16 of the employees including the bargaining unit
17 members?

18 A. Yes.

19 Q. Okay. About a little bit below the
20 middle of the page you have some notes about
21 offer counterproposals. Are those from the
22 union or from Sunbelt?

23 A. That's from the union. If you'll
24 notice that we call for the company at 1:45 p.m.
25 which meant we were on our caucus. Bo is

1 working the counter. Pat announces that Bo is
2 working the counter at which point when the
3 meeting reconvened, we offered our
4 counterproposal to 18.4, 19.1, 19.2, 19.5, 19.6,
5 17.1 and we repropose a national training fund,
6 the health, the pension, CPF and we indicated
7 that the wages had not yet been addressed.

8 Q. Thank you. Would you please return 5J
9 to the pile that has been discussed?

10 A. Yes.

11 Q. Now, if you would please pick up 5K,
12 sir.

13 A. I have it.

14 Q. Thank you. All of the handwriting on
15 this document, and this is 5 of 5 pages, all of
16 it yours, sir?

17 A. Yes.

18 Q. And this meeting started with a safety
19 moment?

20 A. Yes.

21 Q. Was that a waste of the negotiation
22 time?

23 A. No.

24 Q. Okay. It also indicates open wage
25 proposal. Is that -- so the information after

1 that, is that from the union or from Sunbelt?

2 A. No. That's the fact that the wage
3 proposal was still open.

4 Q. Okay. You have some numbered items, 1
5 through 5 on this page, sir?

6 A. Yes.

7 Q. What do those reflect?

8 A. Those reflect open items for
9 discussion.

10 Q. And for this negotiation, Mr. McGowan
11 again attended?

12 A. Yes.

13 Q. Then looking at Page 2 of 5, middle of
14 the page it states company walks out at 9:15?

15 A. Yes.

16 Q. Was that for a caucus?

17 A. I assume it was.

18 Q. And then Sunbelt you have some numbered
19 provisions here. It's 1 through 10 instead of
20 the 1 through 5 that you have on Page 1,
21 correct?

22 A. Yes.

23 Q. So Sunbelt had additional proposals
24 compared to what the union had?

25 A. It doesn't indicate that but them are

1 proposals that are open for discussion, yes.

2 Q. Now, are these proposals 1 through 10
3 from the union or from Sunbelt?

4 A. They are open proposals for discussion.

5 Q. And this is what the union had
6 identified?

7 A. Yeah.

8 Q. Okay. Could you explain meeting
9 reconvenes at 9:30 a.m. Offer 139
10 counterproposal. What happened then?

11 A. Well, that's these counterproposals
12 that we were just discussing.

13 Q. Okay. 1 through 10 that's when the
14 union made?

15 A. Right.

16 Q. And at 9:33 the company walks out. Was
17 that for a company caucus?

18 A. I believe it was.

19 Q. So was the company walking out at 9:15
20 on Page 2 of 5 was that for the union caucus?

21 A. I don't know. It doesn't say.

22 Q. And sitting here today, you don't
23 remember?

24 A. Not specifically.

25 Q. All right. The proposals that you have

1 on Page 3 of 5 that you have numbered 1
2 through 6, those are from Sunbelt, correct?

3 A. Yes.

4 Q. Okay. Then you have a time entered of
5 10:33. That reflects what?

6 A. I believe that's when the union asked
7 for a caucus.

8 Q. So the information that is listed below
9 10:33 on Page 3 of 5 that is what was discussed
10 during the union's caucus, correct?

11 A. Yes.

12 Q. And then looking at Page 4 of 5, at
13 10:39 called the company back, correct?

14 A. Yes.

15 Q. Then were those four proposals verbally
16 given to Sunbelt by the union?

17 A. I don't recall.

18 Q. Do you recall if the union gave Sunbelt
19 any proposals that were in writing on this day?

20 A. No. We responded to your
21 counterproposals.

22 Q. And you responded verbally, correct?

23 A. Correct. Actually, it's denoted right
24 here after we came up with another date June 5th
25 at noon --

1 Q. Just a moment. I apologize. Which
2 page are you looking at?

3 A. Page 4.

4 Q. Okay. June 5th. Next meeting.

5 A. And there is the counterproposal.

6 Q. Okay. That is from the union?

7 A. Local 139 to the employer, yes.

8 Q. But, again, verbally not written?

9 A. It's written here but, yes, it was
10 verbal.

11 Q. But you gave the proposal to Sunbelt
12 verbally, correct?

13 A. Yes. Verbally, yes.

14 Q. Company caucused from 10:48 to 11:09;
15 is that correct?

16 A. Yes.

17 Q. And those four points that you have
18 numbered there, then those were Sunbelt's
19 proposals?

20 A. Yes.

21 Q. Was Sunbelt permitted to provide the
22 proposals in this situation verbally rather than
23 in writing?

24 A. They were.

25 Q. And two minutes later the proposal was

1 finished and it indicates that the company walks
2 out. Was that so that the union could caucus?

3 A. Yes.

4 Q. And the union called the company back
5 at 11:20, correct?

6 A. Yes.

7 Q. And below there, it states Local 139
8 proposals as written above. Okay. Are you
9 indicating that any of those proposals had been
10 given to the company in writing?

11 A. No.

12 Q. No. Just verbally written as written
13 here?

14 A. As written here, yes.

15 Q. Please return 5K to your finished pile.

16 MS. HILL: Your Honor, we have been
17 going for I believe a little bit over an hour.
18 Or am I incorrect? Should we take another
19 break?

20 JUDGE ROSAS: Do you want to take a
21 break at this point? Off the record.

22 (Whereupon, a lunch recess was
23 taken.)

24 JUDGE ROSAS: Back on the record.

1 BY MS. HILL:

2 Q. Yes. Please look at General Counsel
3 Exhibit 1 or it might be 5L.

4 A. Yes.

5 Q. 5L. Middle of the page I believe you
6 indicated that this was a counterproposal from
7 Sunbelt?

8 A. You're referring to the middle of the
9 first page, wage freeze, wage reopener? Yes.

10 Q. There was also discussion during the
11 negotiations regarding the forecasted economic
12 downturn, correct?

13 A. Sunbelt's perception, yes.

14 Q. Did Sunbelt say it was perception or
15 did Sunbelt provide the union with information
16 from some economic experts?

17 A. Yes.

18 Q. It was from experts, correct?

19 A. Your perception.

20 Q. Sir --

21 MS. HILL: Your Honor, would you please
22 direct the witness.

23 JUDGE ROSAS: That's a yes or no or you
24 can't answer that or you don't know, one of
25 those four.

1 THE WITNESS: Yes.

2 BY MS. HILL:

3 Q. Page 2 of 4 of 5L.

4 A. Yes.

5 Q. What are you referring to signoff?

6 A. That's the document that we provided
7 asking to sign off on all of the tentatively
8 agreed upon items which you refused to sign.

9 Q. Excuse me. Sunbelt did not wish to
10 sign it at that time, correct?

11 A. Correct. Yes.

12 Q. Did Sunbelt state to the union --
13 excuse me. Sunbelt stated to the union that it
14 wished to do a red line comparison of what was
15 presented on June 5, 2019 to what it had in its
16 records, correct?

17 A. You'll have to rephrase that. That was
18 a little jumbled.

19 Q. Did Sunbelt tell the union that it
20 wanted instead of I guess you would say
21 eyeballing the two documents, the signoff
22 document that the union had presented to Sunbelt
23 and then the tentatively agreed to provisions
24 that Sunbelt had prepared, that it wanted to do
25 a red line comparison of the two documents?

1 A. Yes.

2 Q. And did Sunbelt explain that it did not
3 have an electronic version of the union's
4 signoff document?

5 A. Yes.

6 Q. Did Sunbelt request the electronic
7 signoff document from the union?

8 A. Yes.

9 Q. And at negotiations, the union, in
10 particular Mr. Ervin, said that he would forward
11 the electronic version of the signoff, correct?

12 A. Yes.

13 Q. And subsequent to that negotiation
14 session, you told Mr. Ervin not to send the
15 electronic version, correct?

16 A. Initially, but it was determined that
17 you would get the electronic version.

18 Q. But it is also correct that Mr. Ervin
19 forgot to forward that electronic version of the
20 signoff agreement before the next negotiation
21 session, correct?

22 A. Yes. But you were also offered a
23 physical copy at that time.

24 MS. HILL: Your Honor, move to strike.

25 JUDGE ROSAS: Move to strike after yes.

1 Okay.

2 MS. HILL: Thank you.

3 BY MS. HILL:

4 Q. And Sunbelt stated to the union during
5 this negotiation session on June 5th that there
6 were a series of articles from the union's
7 original proposal that had been either deleted
8 completely or incorporated into other articles,
9 correct?

10 A. Yes.

11 Q. And Mr. Buffalo indicated that he might
12 not be available for the next negotiation
13 session after the June 5th session, correct?

14 A. Is it documented here?

15 Q. Look at the bottom of Page 4 of 4.

16 A. Yes.

17 Q. And so independently you could not
18 remember that, correct?

19 A. Not necessarily, no.

20 Q. And the -- and Sunbelt asked the union
21 during this negotiation session why it did not
22 request the parties to -- I'm sorry.

23 A. Go head. I am done, I hope.

24 Q. And Sunbelt during negotiation sessions
25 on June 5th asked the union why it did not ask

1 Sunbelt earlier to initial each of the TA'd
2 provisions, correct?

3 A. Well, we had.

4 MS. HILL: Sir, move to strike. Your
5 Honor, would you --

6 JUDGE ROSAS: Sir, yes or no.

7 THE WITNESS: No.

8 BY MS. HILL:

9 Q. At some point during the negotiation
10 session, did -- Strike that.

11 All of the handwriting on this
12 Exhibit 5L yours, sir?

13 A. Yes.

14 MS. HILL: Excuse me. Mr. Wiese, his
15 affidavit so I can cross.

16 MR. WIESE: I am refusing turn that
17 document over given that cross examination has
18 already started.

19 JUDGE ROSAS: Overruled. Hand it over.

20 MR. WIESE: All right.

21 MS. HILL: Now did you keep a copy of
22 this one?

23 MR. WIESE: What?

24 MS. HILL: Do you have?

25 MR. WIESE: I have my copy, yes.

1 MS. HILL: Does Mr. Ryan have a copy?

2 MR. RYAN: I do have a copy.

3 MS. HILL: Okay. May I approach? Are
4 these all the same because you have them folded
5 over.

6 MR. WIESE: I don't know why they are
7 like that but they should all be the same.

8 MS. HILL: They are all the same?

9 MR. WIESE: Yes. Yes.

10 MS. HILL: Okay.

11 BY MS. HILL:

12 Q. All right. Directing your attention,
13 sir, to five -- Page 5 Paragraph 16 --
14 Paragraph 16 and 17, sir.

15 A. Yes.

16 Q. Okay. Both of these -- let's start
17 with 16. The pension provision, you indicated
18 that you had -- you have negotiated you think
19 maybe 40, 50 Collective Bargaining Agreements?

20 A. Correct.

21 Q. And every single one of those include
22 the 139's pension?

23 A. Yes.

24 Q. Did Sunbelt indicate to you during
25 negotiations that not all of Sunbelt's

1 Collective Bargaining Agreements have the
2 union's pension or retirement plan?

3 A. Yes.

4 Q. Now, are you saying that Sunbelt's
5 position on the 401K was a waste of the union's
6 negotiation time?

7 A. No.

8 Q. Paragraph 17 on-call language for
9 Section 21.6. I'll give you a moment to review
10 your -- that provision.

11 A. Yes.

12 Q. Okay. Did -- And Sunbelt negotiated
13 the ultimate language that was provided for this
14 provision, this article, in the Collective
15 Bargaining Agreement, correct?

16 A. For hours of work?

17 Q. For on-call language.

18 A. Yes.

19 Q. Is the union claiming that Sunbelt
20 wasted negotiation time regarding the
21 negotiations relating to on-call language?

22 A. No.

23 Q. If you would please turn to Page 6 and
24 it's Paragraph 22 and it goes onto Page 7.

25 A. Yes.

1 Q. All right. With respect to the wage
2 proposal -- oh, excuse me. With respect to the
3 health insurance proposal from the union,
4 Sunbelt did provide a counterproposal to the
5 union regarding that, correct?

6 A. Yes.

7 Q. And, in fact, Sunbelt, as indicated
8 earlier, had provided the union with details of
9 Sunbelt's health insurance plan, correct?

10 A. Yes.

11 Q. And Sunbelt pointed out to the union
12 during negotiation sessions that which of the
13 employees participated in the 401K, correct?

14 A. Yes.

15 Q. And this is bargaining -- excuse me --
16 bargaining unit members who participated in the
17 plan as of the date of the negotiation session,
18 correct?

19 A. Yes.

20 Q. And Sunbelt also pointed out which of
21 the bargaining unit members participated in
22 Sunbelt's health insurance plan along with their
23 dependents, correct?

24 A. Yes.

25 MS. HILL: All right. I think those

1 were the only paragraphs that you had discussed
2 on direct, correct?

3 MR. WIESE: I believe so.

4 BY MS. HILL:

5 Q. All right. Directing your attention,
6 sir, to Exhibit 5M.

7 A. I have it right here.

8 Q. Thank you, sir. All the handwriting on
9 this document yours, sir?

10 A. Yes.

11 Q. There is an arrow in the left-hand
12 column. What does that reflect, sir?

13 A. I am not sure. It looks like it's
14 going towards the safety moment which was
15 hydration sunscreen protection, but I'm not
16 exactly sure. It may be just a doodle.

17 Q. It indicates here Mike E., that stands
18 for Mike Ervin, correct?

19 A. Yes.

20 Q. It also states that Sunbelt never
21 received the electronic version of the previous
22 proposal from the unit, correct?

23 A. The signoff, yes.

24 Q. The signoff document. Was anything
25 else discussed other than the signoff document?

1 A. Not that I recall.

2 Q. Was there a discussion regarding Mr.
3 Smith's termination?

4 A. Yeah. I believe there might have been.

5 Q. And during that discussion regarding
6 Mr. Smith's termination, the union asked for
7 specifics as to why he was terminated?

8 A. Generally speaking the union asked for
9 any termination or layoff to be in writing.

10 MS. HILL: Sir, move to strike.

11 JUDGE ROSAS: Stricken. Yes, no or you
12 don't know or don't recall.

13 THE WITNESS: Okay.

14 JUDGE ROSAS: What's the answer?

15 THE WITNESS: Reask the question.

16 (Whereupon, the record was read
17 as requested.)

18 THE WITNESS: Yes.

19 BY MS. HILL:

20 Q. And Sunbelt provided the reasons,
21 correct?

22 A. Verbally, yes.

23 Q. But the union did not ask for written
24 explanation of why he was terminated, correct?

25 A. Yes, we did.

1 Q. Near -- The union asked for copies of
2 his disciplinary records at the end of the
3 negotiation session, correct?

4 A. That may be, yes.

5 Q. And Sunbelt provided those disciplinary
6 action forms and his ultimate termination form,
7 correct?

8 A. Yes.

9 Q. All right. I keep seeing you looking
10 over in Mr. Ervin's direction. Are you getting
11 information from Mr. Ervin?

12 A. No, I am not. No, I am not.

13 Q. Why did the negotiations end at 9:12?

14 A. They were nonproductive and the
15 conversation got adversarial.

16 Q. Please explain "adversarial."

17 A. There was a heated discussion between
18 Bo and Dan Marsolek about the progress of the
19 negotiation.

20 Q. And who asked to have the negotiations
21 ended?

22 A. I believe it was mutually agreed upon.

23 Q. Were discussions held outside of the
24 conference room as indicated on that
25 Respondent's 1?

1 A. Not between the union and the company.

2 Q. Okay. Were there discussions between
3 the union, Mr. Buffalo, and Sunbelt rentals in
4 the office next to the Sunbelt's caucus room?

5 A. At that point, I was standing in the
6 parking lot so I don't know.

7 Q. The negotiations reconvened at 10:09
8 and to set the next negotiation session,
9 correct?

10 A. Yes.

11 Q. And that was set for what time?

12 A. 9:00 a.m.

13 Q. And it was also the union also said
14 that it would forward electronically the signoff
15 document to Sunbelt, correct?

16 A. Yes.

17 Q. All right. Please return 5M to your
18 done pile. Now, if you would look at 5N.

19 A. Yes.

20 Q. Prior to this negotiation session, did
21 you see a -- any letter from Jason Mayfield
22 regarding negotiations on the 8th?

23 A. Yes.

24 Q. And what do you recall seeing in the
25 letter, sir?

1 A. The letter suggested that the
2 operations at the Profit Center 776 were going
3 to change and that they essentially would be
4 closing their business as it was currently.

5 Q. Did it also then -- did it indicate
6 anything else regarding the business at
7 Franksville location 776?

8 A. I'm sure it did. I don't recall
9 specifically.

10 Q. At this negotiation session, Mr.
11 Mayfield, Mr. Anderson, Mr. Bogardus were there
12 with me for the -- for Sunbelt, correct?

13 A. Yes.

14 Q. And Mr. Smith was also there along with
15 you, Mr. Ervin, Mr. Marsolek and Mr. Buffalo,
16 right?

17 A. Correct.

18 Q. There was a safety moment?

19 A. Yes.

20 Q. And that was directed from whom?

21 A. The union.

22 Q. Now, at this time, what was the --
23 Okay. What was the safety moment raised by the
24 union?

25 A. There was some threats of well-being to

1 the union reps from one of the employees at
2 Sunbelt.

3 Q. And when did those threats occur?

4 A. I can't say specifically because I
5 didn't personally witness them but prior to the
6 negotiations.

7 Q. Months prior to the negotiations?

8 A. No. I believe it was pretty close to
9 that time frame.

10 Q. But -- and who heard about the threats?

11 A. Mike Ervin.

12 Q. Anyone else?

13 A. Dan Marsolek.

14 Q. And Mr. Marsolek was asked during
15 negotiations when did these occur, correct?

16 A. Yes.

17 Q. And Mr. Marsolek was also questioned
18 why didn't you report this immediately, correct?

19 A. Yes.

20 Q. And Mr. Marsolek did not have an answer
21 for Sunbelt with respect to why he didn't
22 answer -- why he didn't report it immediately,
23 correct?

24 A. Yes.

25 Q. And your notes indicate Mario. Do you

1 know Mario's last name?

2 A. I do not.

3 Q. But he was the bargaining unit member,
4 correct?

5 A. Yes.

6 Q. And then it also indicates Steve was
7 weighing in about, about what, sir?

8 A. I'm not sure. I am sure it was
9 discussing --

10 MS. HILL: Move to strike.

11 JUDGE ROSAS: I'm sorry. Repeat the
12 question.

13 BY MS. HILL:

14 Q. Steve was weighs in about, what was he
15 weighing in about?

16 JUDGE ROSAS: So the answer is I don't
17 recall. Next question.

18 MS. HILL: Thank you.

19 BY MS. HILL:

20 Q. It also indicates Mike, Mike Ervin,
21 elaborates on Sunbelt's knowledge. Sunbelt's
22 knowledge of what, sir?

23 A. The apparent threat.

24 Q. And your question at this point was
25 about what?

1 A. How to handle such a threat.

2 Q. And Sunbelt's response was to have
3 human resources investigate it, correct?

4 A. You referred to the policy handbook and
5 then, yes, ultimately HR.

6 Q. Because this was the first time Sunbelt
7 had heard this allegation about Mario, correct?

8 A. To my knowledge, yes.

9 Q. And did you -- you didn't expect
10 Sunbelt at that moment to start questioning
11 Mario about the threats, correct?

12 A. No.

13 Q. Then the next entry is Dan brings up
14 third-party vendors not using safety policy
15 specifically. Tie off loading and unloading.
16 Which vendor was this?

17 A. I'm not sure. That would be a question
18 to ask Dan.

19 Q. Because during the negotiations
20 Mr. Marsolek did not give the specifics as to
21 who the vendor was, correct?

22 A. Yes.

23 Q. And Mr. Marsolek did not give specifics
24 as to where this occurred, correct?

25 A. Not to my knowledge.

1 Q. All right. So during in negotiations
2 that were supposed to be about the closing of
3 this location, the parties were discussing
4 safety issues, correct?

5 A. Yes.

6 Q. All right. With respect to the
7 continued negotiations this day, Sunbelt then
8 raised the fact that two bargaining unit members
9 were going to be laid off, correct?

10 A. Yes.

11 Q. For lack of work, correct?

12 A. Yes.

13 Q. And the lack of work was because the
14 union -- Sunbelt told the union that the
15 bannering and the inflatables and the picketing
16 were reducing Sunbelt's business out of this
17 location, correct?

18 A. I don't recall that being discussed,
19 but yeah. You had said that the work was low.

20 Q. And the union asked for a specific
21 written notice regarding laying off the two
22 individuals, correct?

23 A. Yes.

24 Q. And did Sunbelt then inform you that
25 the two individuals were going to be informed of

1 the layoff that day of negotiation August 8th?

2 A. Yes.

3 Q. And that after they were informed, the
4 union would receive a copy of the two layoff
5 notices, correct?

6 A. Yes.

7 Q. And then the parties negotiated a
8 severance for the two individuals, correct?

9 A. Yes.

10 Q. And Sunbelt made the initial offer of
11 severance, correct?

12 A. Yes.

13 Q. And the union made a subsequent
14 offer --

15 A. Yes.

16 Q. -- severance. And Sunbelt also by the
17 end of the negotiations indicated that because
18 the parties needed more time to negotiate the
19 severance for the two individuals that those two
20 individuals were going to be paid straight time
21 from August 8th through August 16th, correct?

22 A. Yes.

23 Q. And did the union disagree with that
24 offer from Sunbelt?

25 A. No.

1 Q. Did the union on August 8th attempt to
2 negotiate how the location that Franksville was
3 requesting to be reorganized?

4 A. We had questions about how the
5 reorganization would occur, yes.

6 Q. You had questions but did the union
7 attempt to negotiate how it was going to be
8 reorganized?

9 A. No.

10 Q. Did the union -- and the union did not
11 ask any questions as to when the equipment at
12 the location was going to be transferred
13 elsewhere, correct?

14 A. I don't recall that.

15 Q. I'm sorry. Move to strike. And my
16 question was a yes or no and it required a yes
17 or no.

18 A. I thought it was yes, no or I don't
19 know.

20 JUDGE ROSAS: I'll allow that one.
21 Overruled.

22 BY MS. HILL:

23 Q. Okay. So you don't know when Sunbelt
24 had made that offer?

25 A. I don't know.

1 Q. Okay. Did Sunbelt indicate that the
2 Franksville location was not closing?

3 A. Yes.

4 Q. And Mr. Mayfield indicated that the
5 Franksville location become a will-call
6 location, correct?

7 A. Yes.

8 Q. And that the Franksville location was
9 going to have customers who could pick up
10 equipment, correct?

11 A. Yes.

12 Q. And Mr. Mayfield referred to the
13 equipment that was going to be at the
14 Franksville location as being small equipment,
15 correct?

16 A. Yes.

17 Q. And Mr. Mayfield defined what small
18 equipment was, correct?

19 A. Yes.

20 Q. Now, you have a line on Page 2 of 3
21 just about in the middle of the page. It looks
22 like Mike I ask. Could you read that, please?

23 A. What page are you on?

24 Q. Page 2 of 3. Just about the middle of
25 the page it looks like Mike.

1 A. Mike and I asked about just two union
2 members so we were down to two bargaining unit
3 employees at the time.

4 Q. And those two bargaining unit employees
5 were mechanics, correct?

6 A. Yes.

7 Q. One was a road mechanic, correct?

8 A. Yes.

9 Q. And one was a shop mechanic, correct?

10 A. Yes.

11 Q. No offense to your handwriting, sir,
12 but just two lines down from there you have
13 9:17, Local 139, what's the word after that?

14 A. Caucus.

15 Q. Thank you. And then after that you
16 have the union requested staffing at other
17 locations statewide and northern Illinois?

18 A. Yes.

19 Q. And Sunbelt's response to that request
20 was that it is available electronically,
21 correct?

22 A. Yes.

23 Q. And at 9:38, was it Mr. Ervin who asked
24 if the two sides could meet again to discuss
25 severance?

1 A. Yes.

2 Q. Now, Mr. Buffalo according to Page 3 of
3 3 asked for the staffing level statewide?

4 A. Statewide and northern Illinois, yes.

5 Q. And in response -- and then Mr. Ervin
6 elaborates on staffing for where?

7 A. Well, the line before that states Mike
8 points out openings online and then elaborates
9 on the staffing.

10 Q. But staffing for Franksville, for the
11 state or what?

12 A. No. Statewide.

13 Q. And the union was requested to put in
14 writing what documents it wanted, correct?

15 A. Yes.

16 Q. And then Mr. Ervin asked for
17 negotiations sometime during the week of the
18 19th, correct?

19 A. Yes.

20 Q. And the parties agreed to August 16th,
21 starting at 11:00 a.m., correct?

22 A. Yes.

23 Q. Please return that to one of your piles
24 and then go to Exhibit 50 or 5, 0, excuse me.

25 A. Yes.

1 Q. And this was for the August 16th
2 negotiations regarding severance, correct?

3 A. Yes.

4 Q. The union was informed how the members
5 could apply for any posted electronic -- excuse
6 me -- electronically posted job online, correct?

7 A. Yes.

8 Q. And Sunbelt explained to the union how
9 references from prospective employers are
10 handled at Sunbelt, correct?

11 A. Yes.

12 Q. And union was informed that it's an
13 outside vendor who handles all references,
14 correct?

15 A. Yes.

16 Q. The union did not request anything
17 differently to be done with respect to
18 references for these two laid off employees,
19 correct?

20 A. Yes.

21 Q. These two employees did -- were
22 eligible for rehire, correct?

23 A. Yes.

24 Q. Mr. Ervin provided the severance
25 proposal from the union, correct?

1 A. Yes.

2 Q. And that proposal indicated a request
3 for two years of severance; is that correct?

4 A. Yes.

5 Q. Mr. Mayfield questioned the union
6 regarding why two years, correct?

7 A. Yes.

8 Q. And the union's response to that was
9 what, sir?

10 A. We have done it in the past with other
11 companies.

12 Q. The union was also asked if the two
13 individuals had already had new jobs, correct?

14 A. Yes.

15 Q. And did they two individuals already
16 have new jobs?

17 A. I believe they did.

18 Q. And the union was informed that Mr.
19 Anderson was no longer the profit center manager
20 at Franksville, correct?

21 A. Yes.

22 Q. On Page 2 of 4, you have numbered 1
23 through 5 and these are proposals to the union
24 regarding the severance for these two
25 individuals, correct?

1 A. Yes.

2 Q. Sunbelt agreed to pay for COBRA for one
3 month?

4 A. Yes.

5 Q. And Sunbelt explained to the union how
6 the employees could get their -- roll over their
7 401K or take out a loan from their 401K,
8 correct?

9 A. Yes.

10 Q. And a release was given to the union
11 regarding the severance package, correct?

12 A. Yes.

13 Q. The parties also negotiated earned but
14 unused vacation time that the two employees had,
15 correct?

16 A. Yes.

17 Q. Was there anything that the union
18 requested topics to be negotiated for these two
19 individuals that were not negotiated?

20 A. No.

21 Q. All right. And are you aware if the
22 two individuals did sign off on the release
23 agreements?

24 A. It's my understanding that they did.

25 Q. Oh, and Sunbelt explained that the

1 severance agreement was subject to taxes and any
2 other withholdings, correct?

3 A. Yes.

4 Q. Sunbelt also explained that one of the
5 individuals was the age of 40 so his severance
6 agreement was going to have different language
7 than the individual who was under 40, correct?

8 A. Yes.

9 Q. The union requested and received what
10 the vacation totals were for the two
11 individuals, correct?

12 A. Yes.

13 Q. And Sunbelt also identified the human
14 resources person who would be handling all of
15 the severance information for the two employees,
16 correct?

17 A. Yes.

18 Q. All right. Please return 50 to the
19 pile. And the union did not argue with Sunbelt
20 at that negotiation session about Sunbelt's
21 statement that there was a lack of work or
22 business for Franksville, correct?

23 A. We asked to have verification but we
24 didn't argue it, no.

25 Q. And did -- and Mr. Mayfield did provide

1 some statistics regarding year over year
2 business for that location, correct?

3 A. Yes.

4 Q. And I'm sorry to ask you to go back to
5 50 but do you see any of Mr. Mayfield's
6 statistics in this document, sir?

7 A. No.

8 Q. And do you see in 5N, this is from the
9 August 8th negotiation, any statistics provided
10 by Mr. Mayfield in those notes?

11 A. No.

12 Q. And why is that, sir?

13 A. None were provided to my knowledge.

14 Q. But verbally they were provided?

15 A. Verbally, yes.

16 Q. And General Counsel Exhibit 14, this is
17 whose handwriting?

18 A. Mine.

19 Q. And this -- all of it is your
20 handwriting, correct?

21 A. Yes.

22 Q. And this was -- these notes were based
23 on a strategy meeting with just the union team
24 on the day after the March 21, 2019
25 negotiations, correct?

1 A. Yes.

2 Q. All of these -- and all of these
3 proposals were then provided to Sunbelt in the
4 next negotiation session, correct?

5 A. I believe so, yes.

6 Q. But they were -- were they -- they were
7 given to Sunbelt verbally, correct?

8 A. I believe they were referred to in
9 previously written documents.

10 Q. But these proposals on this exhibit are
11 different from earlier proposals from the union,
12 correct?

13 A. They fall under the same article with
14 the manipulations or the modifications that we
15 would hold would get the deal done.

16 Q. But, sir, when you presented these
17 proposals to Sunbelt after March 22, 2019, the
18 union made these proposals verbally, correct?

19 A. We did not generate a piece of paper
20 with these proposed provisions specifically.

21 Q. And you did not provide these proposals
22 to Sunbelt electronically in advance of the next
23 negotiation session, correct?

24 A. No, we did not.

25 Q. And there were no telephone calls from

1 the union negotiating team to anyone on the
2 Sunbelt negotiating team to provide Sunbelt with
3 these new proposals prior to the next
4 negotiation session, correct?

5 A. They weren't new proposals. They were
6 modifications to existing proposals but, no.
7 There was no advanced notification to any
8 modification that we discussed at this strategy
9 meeting.

10 Q. Well, sir. You can use the term
11 modification. But also modification did result
12 in a new proposal, correct?

13 A. It changed the proposal.

14 MS. HILL: All right. So move to
15 strike.

16 JUDGE ROSAS: Stricken. Next question.

17 BY MS. HILL:

18 Q. Again, the modification resulted in a
19 new proposal to Sunbelt, correct?

20 A. No.

21 Q. So even though you had a strategy
22 meeting, you didn't have any new proposals for
23 Sunbelt at the next negotiation session?

24 A. We had modifications to the proposals
25 that were being discussed.

1 Q. The union and Sunbelt met twice in
2 August of 2018, correct?

3 A. Yes.

4 Q. And the union and Sunbelt met twice in
5 February of 19th for negotiations, correct?

6 A. Yes.

7 Q. Now, in addition to the union not
8 liking the temperature in the conference room
9 where negotiations were being held, the union
10 complained about something else about the
11 facility at Sunbelt, correct?

12 A. Yes.

13 Q. And what was that, sir?

14 A. On one particular negotiation session
15 that Terry McGowan attended, the rest room
16 facilities were not operating correctly.

17 Q. When you say -- you made it plural,
18 facilities, or just the men's restroom?

19 A. The men's room I mean. None of us went
20 in the female's restroom to check it.

21 Q. And the men's restroom who notified
22 Sunbelt of an issue?

23 A. I believe it was me.

24 Q. And how quickly was it corrected?

25 A. Before the session was over.

1 Q. Would you agree that it was -- Well,
2 Mr. Anderson fixed the problem?

3 A. I believe he did. I didn't watch him.

4 Q. And that repair was because a chain had
5 fallen off of the flush arm of the toilet?

6 A. Again, I wasn't involved in the repair,
7 but the situation was rectified.

8 Q. But Mr. Anderson did discuss it during
9 the negotiation session, correct?

10 A. Yes.

11 Q. When did Sunbelt's bargaining team
12 members perform work in the shop?

13 A. I don't recall that it was suggested
14 they did.

15 Q. Did you ever observe anyone from
16 Sunbelt's bargaining team performing work in the
17 shop during negotiations?

18 A. I did not.

19 Q. Are you aware of any union negotiating
20 team member observing Sunbelt's bargaining team
21 member performing work in the shop?

22 A. I don't know.

23 Q. And you're not aware of Sunbelt
24 discussing any personal things during Sunbelt's
25 caucuses, correct?

1 A. So far, yes.

2 Q. I couldn't hear the last part, sir.

3 A. I don't know what you are referring.

4 Q. Are you aware of Sunbelt discussing any
5 personal things during Sunbelt's caucuses?

6 A. Not that I'm aware of, no.

7 Q. Are you aware of an allegation that
8 Chris Pender told employees that the union was
9 not going to get in at Sunbelt?

10 A. It was my understanding that there was
11 a rumor going around that it was clearly -- made
12 clear by Sunbelt management that the union was
13 not going in but it was an innuendo. I didn't
14 hear it personally.

15 Q. You said management, but I am referring
16 to Mr. Pender.

17 A. Through Mr. Pender.

18 Q. Okay. Do you know who Chris Pender is?

19 A. I don't.

20 Q. Okay. Did you hear any as you call it
21 innuendo or rumors about a Mr. Chris Pender?

22 A. Not necessarily Chris Pender but that
23 it was discussed management stated clearly that
24 the union would not get in there.

25 Q. All right. But when did you hear this

1 innuendo or rumor?

2 A. I don't recall.

3 Q. But it was after the certification of
4 the union by the NLRB?

5 A. Yes.

6 Q. Did you investigate the rumor?

7 A. I did not personally. I suggested that
8 Mike Ervin or Dan Marsolek do so.

9 Q. Do you know who did?

10 A. I believe both of them did.

11 Q. Did you hear that Mr. Pender threatened
12 employees that it would be feudal for them to
13 select the union as their bargaining
14 representative?

15 A. Not necessarily, no.

16 Q. Well, okay. Not necessarily. Does
17 that mean you heard something similar to that?

18 A. I heard that threats were put out
19 there, yes.

20 Q. And who did you hear about the threats
21 from?

22 A. The negotiating team, Mike and Dan.

23 Q. Just those two because the negotiating
24 team also included Mr. Buffalo, correct?

25 A. Yes. Just Mike and Dan.

1 Q. Did you ask them to investigate that
2 rumor?

3 A. Yes.

4 Q. And did they give you a report?

5 A. Nothing that was substantiated.

6 Q. And did Mr. Marsolek and Mr. Ervin give
7 you a report regarding the other rumor about Mr.
8 Pender stating that the union was not going to
9 get in?

10 A. Yes.

11 Q. And what was that report? What did it
12 state?

13 A. Nothing that was substantiated.

14 Q. These reports that you received from
15 Mr. Marsolek and Mr. Ervin, were they verbal or
16 in writing?

17 A. Verbal.

18 Q. Did you hear -- did you hear that Mr.
19 Anderson allegedly interrogated employees about
20 their union sympathies?

21 A. No.

22 Q. Did you hear that Mr. Anderson
23 allegedly interrogated employees about their
24 union activities?

25 A. No.

1 Q. What is Sunbelt's fiscal year?

2 A. Pardon?

3 Q. What is Sunbelt's fiscal year?

4 A. I want to say it's June to June but I'm
5 not sure.

6 Q. And there is no requirement for Sunbelt
7 to negotiate wages before negotiating the
8 noneconomic provisions of a Collective
9 Bargaining Agreement, correct?

10 A. Yes.

11 Q. And what is that?

12 A. What is what?

13 Q. What prohibition is there?

14 A. There is none.

15 Q. There is none. During one of the
16 negotiation sessions, did you mention that you
17 were a marine?

18 A. Yes.

19 Q. And in response to that, did Mr.
20 Mayfield thank you for your service there?

21 A. Yes.

22 Q. Do you believe that that was a waste of
23 negotiation time?

24 A. No.

25 Q. All right. Also, during negotiations,

1 did you state that Sunbelt did not respect you?

2 A. Yes.

3 Q. And in response to your statement, did
4 Sunbelt say, sir. You are a marine. Sunbelt
5 respects you?

6 A. Yes.

7 Q. Was that a waste of negotiation time?

8 A. No.

9 Q. And the union did not ask Sunbelt for
10 justifications for each of its proposals,
11 correct?

12 A. Which proposals?

13 Q. Each of its, all of its.

14 A. The whole thing?

15 Q. Each of its proposals, correct.

16 A. I don't know what you are referring.

17 Q. Okay. Sunbelt made proposals for the
18 Collective Bargaining Agreement, correct?

19 A. You made multiple proposals, yes.

20 Q. And the union did not ask Sunbelt to
21 provide it with a reasoning or a justification
22 for that proposal, correct, for each of those
23 proposals?

24 A. No. Actually, we did.

25 Q. For every single one of them?

1 A. Not every single one, no.

2 Q. Did Sunbelt ever refuse to provide an
3 explanation or justification for any of its
4 proposals?

5 A. Yes.

6 Q. And which one, sir?

7 A. Overtime, dues checkoff, boots. Those
8 come to mind.

9 Q. But I thought you already testified
10 that when it came to dues Sunbelt explained that
11 for Sunbelt to handle any kind of deduction,
12 whether it's dues or anything else, there is a
13 cost associated with it, correct?

14 A. Yes.

15 Q. And that that was a cost that Sunbelt
16 at that point was not willing to incur, correct?

17 A. For this location.

18 Q. For that location, correct?

19 A. Yes.

20 Q. That was part of the reasoning,
21 correct?

22 A. Yes.

23 Q. And Sunbelt also, and I'm sorry to go
24 over this again, but pointed it out to two other
25 unit contracts that did not have Sunbelt

1 handling the dues deduction, correct?

2 A. Yes.

3 Q. And those were provided to the union as
4 explanations or justification for its position,
5 correct?

6 A. Yes.

7 Q. And with respect to boots, Sunbelt did
8 negotiate provision regarding the boots
9 allowance, correct?

10 A. Yes.

11 Q. And Sunbelt also explained that in some
12 locations the Red Wing boots were the preferred
13 boot for the employees and, therefore, there was
14 a coupon available, correct?

15 A. Yes.

16 Q. And that was part of the justification
17 for Sunbelt's position on the boots provision,
18 correct?

19 A. Yes.

20 Q. And with respect to overtime, Sunbelt
21 also explained to the union about the financial
22 situation for that profit center, correct?

23 A. Verbally, yes.

24 Q. Based on what you just said, are you
25 saying that the union demanded from Sunbelt in

1 writing justifications for each of its
2 proposals?

3 A. Not every one, no.

4 Q. Did the union ever demand from Sunbelt
5 a justification in writing for any of its
6 proposals?

7 A. Some.

8 Q. Which ones? If you need to look at
9 your notes, please do so.

10 A. No. I don't need to look at them. I
11 don't recall.

12 Q. And I want to be sure that my notes are
13 correct. You never were told that Sunbelt had
14 no intention of reaching an agreement with
15 Local 139, correct?

16 A. Not directly.

17 Q. All right. Indirectly, what are you
18 talking about?

19 A. We discussed the rumors that had been
20 overheard by the agent and the organizer.

21 Q. What are you referring to there, sir?

22 A. The discussion we just had about the
23 rumors that we had heard that the organizer and
24 Dan Marsolek were told to investigate which I
25 claimed was not substantiated.

1 Q. Okay. But you did not raise those
2 rumors during any of the negotiation sessions?

3 A. No.

4 Q. Okay. So based on those two
5 investigations, you did not have any hard
6 evidence that Sunbelt had no intentions of
7 reaching an agreement with Local 139, correct?

8 A. Correct.

9 Q. Were you involved in taking any of the
10 photographs or videos of the Franksville
11 location?

12 A. No.

13 JUDGE ROSAS: This is beyond the scope
14 of direct, right, Counsel? I mean --

15 MS. HILL: Correct.

16 JUDGE ROSAS: He is not here for a
17 deposition. I don't see the need -- Are you
18 subpoenaing him to appear in your case?

19 MS. HILL: Yep. Yes, sir. Yep. Yes,
20 sir. Excuse me. Sorry. I thought I was given
21 the latitude yesterday in an effort to try to
22 move things. I'll hold off. I'd be more than
23 happy to have him come back. Thank you. Do you
24 want to ask follow-up questions? That's fine.

25 JUDGE ROSAS: Yeah. I don't think it

1 makes sense in this scenario.

2 MS. HILL: All right. And then the
3 union will agree that because of the language I
4 have in the subpoena, it can be continued to
5 whatever day this week, Mr. Ryan?

6 JUDGE ROSAS: It continues.

7 MS. HILL: It continues. Thank you.

8 JUDGE ROSAS: You are under subpoena by
9 the company in coordination with the attorneys
10 and the company.

11 THE WITNESS: I understand.

12 MS. HILL: So he does not stay --

13 JUDGE ROSAS: Redirect?

14 MR. WIESE: Could I have five minutes?

15 JUDGE ROSAS: Sure. Off the record.

16 (Whereupon, a short recess was
17 taken.)

18 JUDGE ROSAS: Okay.

19 REDIRECT EXAMINATION

20 BY MR. WIESE:

21 Q. Mr. West, I'd like to direct your
22 attention to General Counsel Exhibit 5J.

23 A. Okay.

24 Q. And if you turn over to Page 2 of that
25 document.

1 A. Yes.

2 Q. Okay. If you -- do you see the
3 notation 10:25 meeting reconvenes?

4 A. Yes.

5 Q. And then below that it looks like Pat
6 H, do you see that?

7 A. Yes.

8 Q. Do those reflect discussions that
9 occurred at the bargaining table?

10 A. Yes.

11 Q. And then when did those -- based off of
12 your notes if you can tell, when did those
13 discussions cease?

14 A. I'm not really sure.

15 Q. Okay. I'd like to stay with this
16 document. Direct your attention to Page 6.

17 A. Yes.

18 Q. So where it says call for company 145
19 there?

20 A. Yes.

21 Q. Okay. Who called for the company?

22 A. Me.

23 Q. And did the company come back at that
24 time?

25 A. Not immediately but shortly thereafter.

1 Q. Do the notes explain why the company
2 did not come back?

3 A. Bo was working the counter.

4 MR. WIESE: Nothing further.

5 JUDGE ROSAS: Charging Party?

6 MR. RYAN: Just a couple quick
7 questions.

8 CROSS EXAMINATION

9 BY MR. RYAN:

10 Q. Ms. Hill asked at various times whether
11 discussions about specific proposals were a
12 waste of the union's time. Do you recall that?

13 A. I do.

14 Q. And you indicated that discussions of
15 specific proposals were not a waste of the
16 union's time, correct?

17 A. Yes.

18 Q. Is there anything you would classify as
19 a waste of the union's time?

20 A. Not necessarily, no.

21 Q. Anything in the context of the
22 individual bargaining sessions hot topics?

23 A. I can't specifically say that I agree
24 with having a safety moment at the beginning of
25 each session given the fact that we were working

1 in an administrative role more than an active in
2 the field role.

3 Q. You were also asked about Mr. Mayfield
4 defining what small equipment is in the
5 reorganization?

6 A. Yes.

7 Q. Do you recall what he explained?

8 A. Generators. I don't know. Small
9 equipment. In my opinion that would be not
10 skid-steers or backhoes or bulldozers. Air
11 compressors, generators, pumps, jackhammers,
12 hammer drills.

13 Q. Okay.

14 MR. RYAN: I don't have anything
15 further. Thank you.

16 JUDGE ROSAS: Any follow up?

17 MS. HILL: No, your Honor.

18 JUDGE ROSAS: Sir, you are excused. Do
19 not discuss your testimony with anyone about
20 this case until you are advised otherwise by
21 counsel, okay?

22 THE WITNESS: Yes.

23 JUDGE ROSAS: Have a good day.

24 MS. HILL: Your Honor, based on your
25 instruction regarding having him called back for

1 purposes of the subpoena, he may not stay in the
2 courtroom as Mr. Ervin did, correct?

3 MR. RYAN: He is not planning to.

4 JUDGE ROSAS: They can designate
5 whomever they want to be in the courtroom.

6 MS. HILL: Right but I mean sitting
7 back there.

8 JUDGE ROSAS: Oh, the fact that he may
9 be a witness again?

10 MS. HILL: Yes, sir.

11 JUDGE ROSAS: You may be calling him on
12 rebuttal or you may be called by respondents.

13 MR. RYAN: We weren't planning --

14 MS. HILL: He doesn't have to be here
15 for this but with respect to the subpoenaed
16 testimony, respondent is permitted to continue
17 to use the affidavit, correct, because we did
18 not go beyond the scope for purposes of the
19 affidavit for him. We did for purposes of Mr.
20 Ervin.

21 JUDGE ROSAS: I'll take argument about
22 that at that time. Let me see exactly what the
23 testimony is and what the purpose is.

24 MS. HILL: Okay. Thank you. Thank
25 you, sir.

1 JUDGE ROSAS: Okay.

2 MR. WIESE: Are you speaking with
3 respect to the affidavits that --

4 MS. HILL: Just his that brought up
5 because I believe everyone will agree I only
6 refer to the three paragraphs that Mr. Wiese had
7 directed questions regarding. I didn't go
8 beyond that. Once -- because in Mr. Ervin's
9 situation we were able to get him in for
10 additional.

11 JUDGE ROSAS: Hold on a second. Let me
12 just check that. If you are calling him on your
13 case, have a seat for a minute.

14 MS. HILL: I am not saying that I will,
15 sir. I am just asking for -- and, sir, while
16 you are doing that, if I could use the time are
17 you going to be calling in No. 3 right now?

18 MR. WIESE: So I have one more witness
19 that I am going to call before the three. I
20 think his testimony is -- it really depends on
21 how late everybody wants to go today and there
22 is a lot of variables.

23 MS. HILL: I am just asking so I can
24 tell them, yes, stay here or what.

25 MR. WIESE: It depends on how long we

1 want to go today, so...

2 JUDGE ROSAS: Well, see, I just
3 reviewed the case law that we have available on
4 this and yeah. The case law doesn't appear to
5 be favorable to the production of Jencks
6 material by witnesses called by the respondent.
7 It would be called by the respondent as opposed
8 to the General Counsel.

9 I understand the witness is here today
10 and you have an opportunity to question the
11 witness. The problem is that the scope of the
12 General Counsel's questioning you are entitled
13 to prior statements in connection with that.

14 If you are getting into photographs of
15 the yard and the coercive statements, I mean,
16 this witness' testimony is basically limited as
17 I generally recall to the bargaining, right?

18 MS. HILL: Yes, sir.

19 MR. WIESE: Yes.

20 JUDGE ROSAS: The bargaining. So these
21 other aspects, I mean, hopefully you had the
22 affidavit and you had an opportunity to look at
23 it.

24 MS. HILL: For those provisions.

25 JUDGE ROSAS: In connection with the

1 bargaining. You had an opportunity to look at
2 the entire affidavit, right?

3 MS. HILL: No, sir.

4 JUDGE ROSAS: Did you give her the
5 entirety of the affidavit?

6 MR. WIESE: I did during the course of
7 the examination when she requested it.

8 MS. HILL: Right but to read, I mean,
9 the entire thing I was --

10 JUDGE ROSAS: Okay. All right.

11 MS. HILL: And he gave me the paragraph
12 and then the paragraphs for the particular ones
13 that he was asking. I have not seen the entire.

14 JUDGE ROSAS: All right. So from here
15 on out, ask for the affidavit before the cross
16 examination starts, okay?

17 MS. HILL: Okay.

18 JUDGE ROSAS: All right. Give counsel
19 the affidavit. Let her look at it to see if
20 there is anything else that she may have left
21 out in connection with bargaining in terms of
22 prior statements relating to bargaining, but
23 that's it.

24 If you subpoena this witness back on
25 some other matters, you can -- you can make that

1 application again and with any case law that you
2 think is favorable but I don't think there is
3 based upon what I know at this time.

4 MS. HILL: Okay. Or if on cross Mr.
5 Wiese starts asking questions bringing in the
6 affidavit with respect to that.

7 JUDGE ROSAS: Oh, theoretically --
8 well, I don't know.

9 MS. HILL: It's theoretically.

10 JUDGE ROSAS: That's an interesting
11 question. We will see.

12 MS. HILL: Yes, sir.

13 JUDGE ROSAS: We will deal with that if
14 and when that happens but have some case law.

15 MR. WIESE: So, your Honor, just to
16 clarify, you want me to give her the affidavit
17 right now, give her a chance to review it and
18 then ask any follow-up questions with respect
19 to --

20 JUDGE ROSAS: Yeah.

21 THE WITNESS: So am I staying?

22 JUDGE ROSAS: Just for a moment, see if
23 there is any additional questions.

24 THE WITNESS: While Ms. Hill reviews, I
25 am going to go to the bathroom.

1 JUDGE ROSAS: Yes. Yes. Off the
2 record. Let's try to keep something that hasn't
3 been asked and answered at this point just
4 something that you might see as an inconsistent
5 statement in connection with the bargaining
6 testimony.

7 (Whereupon, a short recess was
8 taken.)

9 JUDGE ROSAS: Are you ready?

10 MS. HILL: Paragraph 6 Page 2.

11 JUDGE ROSAS: Hold on. We are on the
12 record now.

13 MS. HILL: Yes.

14 JUDGE ROSAS: Okay.

15 RECROSS EXAMINATION

16 BY MS. HILL:

17 Q. Okay. Page 2, Paragraph 6.

18 A. Yes.

19 Q. In Paragraph 6 it states that you did
20 not like the agenda for the bargaining sessions,
21 correct?

22 A. Where does it say that?

23 Q. Well, basically you didn't like the way
24 the topics on -- I am trying not to read it,
25 your Honor, into evidence so I am trying to

1 basically summarize it. The first couple
2 sentences you indicate, sir, that the agenda or
3 the pattern of discussion you didn't care for,
4 correct?

5 A. I don't see where that's stated at all.

6 Q. You claim that the agenda was
7 unorganized?

8 A. Where does it say that?

9 Q. In the first line you said you used the
10 word unorganized. In fact, you had a modifier,
11 very unorganized.

12 A. You said Paragraph 6 of Page 2,
13 correct?

14 Q. Yes, sir.

15 A. So you said present for the employer
16 at --

17 MS. HILL: Did you give me the wrong
18 affidavit?

19 MR. WIESE: I may have given the wrong
20 affidavit.

21 MS. HILL: I'm sorry, sir. I just took
22 what he handed to me and gave it to you. I
23 sincerely apologize.

24 MR. WIESE: Do you want me to go get
25 it?

1 MS. HILL: I'm sorry. I didn't even
2 verify it was. This is 43.

3 MR. WIESE: This should be the correct
4 document.

5 MS. HILL: Page 2, right?

6 BY MS. HILL:

7 Q. Line 14, Paragraph 6, all right.

8 A. Yes.

9 Q. You use the words very unorganized,
10 correct?

11 A. Yes.

12 Q. All right. You are referring to the
13 agenda, the process of the negotiations,
14 correct?

15 A. Yes.

16 Q. And then in Line 15 you indicate that
17 you believed it was done intentionally to delay
18 the process?

19 A. Yes.

20 Q. And this is -- your opinion is based
21 just on your opinion that you thought the
22 negotiations were very unorganized?

23 A. Yes.

24 Q. However, during the negotiations, you
25 never told Sunbelt that it was unorganized,

1 correct?

2 A. No. I did.

3 Q. And which negotiation session?

4 A. I don't recall specifically, but I do
5 recall to you specifically that we were not
6 moving in a very productive manner.

7 Q. But you did say it was unorganized,
8 correct?

9 A. Yes.

10 Q. In lines 17 and 18 you refer again to
11 the safety moment, but you also have indicated
12 that the safety moments were short, correct?

13 A. Sometimes.

14 Q. Approximately five minutes?

15 A. Generally, yes.

16 Q. And to the extreme, how long were they?

17 A. Sometimes they carried on 15,
18 20 minutes.

19 Q. Which topic?

20 A. When an employer wanted to discuss with
21 us in detail about what we were doing on our end
22 for safety and our members and --

23 Q. Which negotiation session was this,
24 sir?

25 A. I don't recall specifically but we did

1 discuss that today.

2 Q. And you saw it in your notes?

3 A. I did.

4 Q. Okay. Do you want to look at your
5 notes to see which session it was?

6 A. Not necessarily.

7 Q. But you have a vague recollection?

8 A. Yes. We discussed it today. We
9 discussed it today.

10 Q. Okay. And this was -- Was this with
11 respect to the training or was that with respect
12 to safety?

13 A. More along the lines of safety.

14 Q. You also state that you are a big
15 proponent of safety and discussing safety you
16 consider it to be Sunbelt's tactic to waste
17 time.

18 A. Yes. For negotiation.

19 Q. However, you had -- you had several
20 bargaining unit members who were terminated for
21 violating safety policies and procedures,
22 correct?

23 A. Yes.

24 Q. You had one individual who was
25 terminated because he failed to wear the harness

1 and the tether in a piece of equipment that had
2 a hydraulic arm to it, correct?

3 A. I don't know that specifically, but,
4 yes.

5 Q. And would you agree, sir, that not
6 wearing a harness and a theater to a piece of
7 equipment that has a hydraulic arm to it when
8 you are in the piece of equipment, it can be a
9 very unsafe procedure?

10 MR. WIESE: Objection, your Honor.
11 Relevance and scope.

12 MS. HILL: With respect to this, he is
13 complaining about safety. He says it's
14 important and yet he says it was a waste of
15 time. He is contraindicating himself, sir. He
16 had members who apparently were not aware of
17 some of these safety issues.

18 JUDGE ROSAS: The statement in the
19 affidavit says what?

20 MS. HILL: It says I am a big proponent
21 of safety but we are negotiating -- oh, should
22 this be off the record? We are negotiating the
23 contract in the conference room and not out on
24 the road and it seems to be another company
25 tactic to waste time.

1 JUDGE ROSAS: Okay. So that was
2 your -- that was your previous statement, right?

3 THE WITNESS: Yes.

4 JUDGE ROSAS: Sworn in that affidavit?
5 Correct? Okay. It's in the record. That's it.
6 All right. Next question. You can compare that
7 in the record when you brief this case to his
8 testimony previously. Okay. Go ahead.

9 BY MS. HILL:

10 Q. Okay. You also complain in this
11 affidavit about discussing what portions or
12 proposals have been tentatively agreed to and
13 which have not. That did not occur in every
14 negotiation session, correct?

15 A. Generally speaking our negotiation
16 sessions began with a recap of where we have
17 been and where we hoped to be.

18 Q. Generally or every single time, sir?

19 A. Every time.

20 Q. So now you are changing your testimony
21 from generally to every single time?

22 A. No. I am answering your question.

23 Q. Sir, are you changing your testimony
24 from --

25 A. I am not.

1 Q. -- generally to every single time?

2 A. No.

3 Q. With respect to your affidavit, you
4 also state that employer has been very reluctant
5 to provide written proposals or written
6 counterproposals but Sunbelt provided you
7 proposals the very first day of negotiation?

8 JUDGE ROSAS: Hold on one second. The
9 first part of that question was what he said in
10 the affidavit?

11 MS. HILL: Correct.

12 JUDGE ROSAS: Is that what you said?

13 THE WITNESS: Yes.

14 JUDGE ROSAS: Now follow up.

15 BY MS. HILL:

16 Q. And then follow-up question isn't it
17 true, sir, that Sunbelt provided you even on the
18 first day of negotiations written proposals?

19 A. No.

20 Q. They -- all of the benefits
21 information, sir?

22 A. That wasn't a proposal. That was a
23 company policy.

24 Q. Sir, Sunbelt presented the information
25 to the union and stated this is Sunbelt's

1 proposal regarding the benefits, correct?

2 A. For its union and nonunion members or
3 employees.

4 Q. Sir, were we negotiating for the
5 nonunion members?

6 A. No.

7 Q. So those were proposals only for the
8 bargaining unit members, correct, sir?

9 A. No. They were not. That was company
10 policy.

11 Q. Sir, you have indicated that the
12 handbook contained policies, correct?

13 A. Yes.

14 Q. Benefits are not policies, correct?

15 A. Not necessarily, no.

16 Q. Okay. And you have no recollection as
17 to how many written proposals Sunbelt provided
18 to the union, correct?

19 A. On the first session?

20 Q. For any of the sessions.

21 A. Total, no.

22 Q. More than 5?

23 A. Yes.

24 Q. More than 20?

25 A. Yes.

1 Q. More than 30, sir?

2 A. No.

3 Q. And your notes don't reflect how many
4 written proposals, correct?

5 A. No.

6 Q. Okay. Let's try that one again. I am
7 sorry if I didn't understand. Perhaps my -- and
8 I know my question was poorly worded. Did --
9 I'll let that stand.

10 And there were times when the union
11 refused to consider any verbal counterproposals
12 from Sunbelt, correct?

13 A. No. We asked to have them put in
14 writing. We never refused to consider any of
15 them.

16 Q. But only if they were in writing,
17 correct?

18 A. No. We took them into consideration,
19 but we wanted them in writing so at a later date
20 it couldn't be argued that we didn't talk about
21 it.

22 Q. But, sir, for the verbal proposals, the
23 union did not make any counterproposals to
24 Sunbelt's proposals that were verbal, correct?

25 A. No. That's incorrect. My notes

1 indicate that during caucus, we discussed those
2 proposals.

3 Q. The verbal ones?

4 A. Whatever ones we were discussing, yeah.

5 Q. But your notes don't indicate whether
6 they were written or verbal, correct?

7 A. No.

8 Q. Thank you. Your affidavit also
9 complains that the union and the employer have
10 not been signing off on written tentative
11 agreements at the time that they were reached.
12 Now --

13 JUDGE ROSAS: Did you say that?

14 THE WITNESS: I didn't call it a
15 complaint.

16 JUDGE ROSAS: Well, confront him with
17 the prior statement.

18 BY MS. HILL:

19 Q. Sure, if you would look at Line 30,
20 Page 2 because of that, the union and employer
21 have not been signing off on tentative
22 agreements at the time that they are reached.

23 A. That would be an accurate statement.

24 Q. Did you ask Sunbelt to sign off on
25 tentative agreements each time prior to, you

1 know, the union presented that signoff agreement
2 as you called it, did you ever -- you never ever
3 asked Sunbelt prior to that to sign off on a
4 tentative agreement?

5 A. We were having trouble establishing
6 written --

7 Q. Sir, move to strike.

8 JUDGE ROSAS: Yes or no?

9 THE WITNESS: No.

10 MS. HILL: Would you repeat my
11 question, please?

12 (Whereupon, the record was read
13 as requested.)

14 THE WITNESS: No.

15 BY MS. HILL:

16 Q. Okay. My question was poor. Prior to
17 the signoff agreement that we discussed earlier,
18 did the union ever ask Sunbelt to sign off on a
19 tentative agreement as that -- after the
20 tentative agreement was reached?

21 A. No.

22 Q. All right. If you look at Page 3, sir,
23 you make a statement here that from Line 1 to
24 Line 4 hope to go in order of the articles from
25 the comprehensive proposal that we have provided

1 to the provider in the first session but the
2 employer did not want to do that and so it was
3 jumping around from one article another with no
4 real order or organization.

5 However, sir, let's just look at
6 General Counsel Exhibit 5J. It should be right
7 at the top.

8 A. What about 5J?

9 Q. Okay. I was waiting for you to find
10 it, sir. Looking at Page 3 of 6, it appears
11 that the parties discussed looking at about a
12 the third of the way down 19.1 and it went to
13 three lines -- four lines down, excuse me, 19.2,
14 then second line down 19.5, then 19.6.

15 Do you agree that that was in somewhat
16 of an order for that particular article?

17 A. Yes.

18 Q. Sir, would you also agree if you would
19 pull General Counsel Exhibit 5K --

20 A. Okay.

21 Q. -- and just start on Page 1. Again,
22 looking at Page 1, you say on the first page
23 about midpoint 19.1 --

24 MR. WIESE: Objection, your Honor.
25 These notes, I mean, speak for themselves.

1 Whether the numbers are following each other in
2 order --

3 JUDGE ROSAS: Your questioning at this
4 point, Counsel, is limited to inconsistent
5 statements with what's in his affidavit?

6 MS. HILL: Correct. And I am trying to
7 point that out, sir, for the record because
8 that's what everything is going to be based on,
9 correct?

10 JUDGE ROSAS: Uh-huh.

11 MS. HILL: Thank you, sir.

12 MR. RYAN: Your Honor, I'll offer
13 further objection. The section of the affidavit
14 being quoted concerns these notes June 26, 2018
15 bargaining sessions. These notes are from March
16 21, 2019 and April 30, 2019.

17 MS. HILL: Where does it say that?

18 JUDGE ROSAS: Reread the section that
19 you are asking the witness to acknowledge.

20 BY MS. HILL:

21 Q. Okay. I am looking at Paragraph 6 and
22 this one -- I'm sorry. I don't see where it
23 states that it's specifically --

24 JUDGE ROSAS: What's the statement? Go
25 ahead and read it into the record.

1 MS. HILL: Paragraph 6, The employer
2 has caused the bargaining process to unfold in a
3 very unorganized fashion which I believe they
4 have done intentionally to delay the process and
5 drag it out as long as possible. The bargaining
6 sessions generally follow the same pattern. The
7 employer starts out the session with the safety
8 moment. This takes up about five minutes of
9 time while the employer talks about some safety
10 issue or another. I am a big proponent of
11 safety but we are negotiating a contract in a
12 conference room and not out -- oh, I am sorry --
13 and not out on the road and so it seems to me to
14 be another company tactic to waste time.

15 However, if talking about safety is how
16 the employer wants to start every meeting, I get
17 it and have not fought them on that even though
18 a lot of the safety moments end up being
19 repetitive. The first 15 to 20 minutes of each
20 session generally involve us discussing what
21 portions or proposals have been tentatively
22 agreed to, TA'd, and which have not.

23 Throughout the negotiations, the
24 employer has been very reluctant to provide
25 written proposals or written counterproposals.

1 That has continued throughout all of the
2 sessions -- excuse me -- all the sessions even
3 though I have repeatedly asked the employer to
4 provide counterproposals in writing.

5 The employer has provided a number of
6 counterproposals in writing after the union
7 requested it but still provides certain
8 proposals and counterproposals verbally.
9 Because of that, the union and employer have not
10 been signing off on written tentative agreements
11 at the time they are reached. This has caused
12 confusion as the employer has at times told us
13 we do not have a TA on items that the union
14 already has noted have been tentatively agreed
15 to. The union had hoped to go in order of the
16 articles from the comprehensive proposal that we
17 provided to the employer at the first session,
18 but the employer did not want to do that and so
19 the employer has been jumping around from one
20 article to another with no real order or
21 organization.

22 Now, I thought this -- to justify why I
23 was going over some of the sessions, sir, is
24 because the word sessions was used in this
25 particular paragraph.

1 MR. RYAN: I was mistaken about it
2 being specific to that but I would point out
3 that the affidavit is dated April 18th so
4 anything after that.

5 JUDGE ROSAS: April 18th --

6 MR. RYAN: 2019.

7 BY MS. HILL:

8 Q. All right. Then let's go to 5I. This
9 is --

10 A. Okay.

11 Q. Looking at -- let's look at Page 5 of 6
12 of your notes, sir.

13 A. Okay.

14 Q. About a little past halfway down it
15 states 18.1, 18.3, 18.4, 18.5, 18.6, 18.7. Sir,
16 would you agree that those appear to be in order
17 based on your notes?

18 A. I would disagree.

19 Q. How would you disagree, sir?

20 A. If you look at just above that, we had
21 discussed 15.5 then we discussed 18.1 then we
22 discussed what was 20.3 per your agreement, 20.4
23 per your agreement, 18.5 per your agreement,
24 20.6 per your agreement, 20.7 per your
25 agreement, 19.1 per your agreement.

1 If you'll notice on each one of those
2 next to that with a slash is another designation
3 18.3, 18.4, 20.5, 18.6, 18.7, and 21.1 which
4 would be indicative of what was the designation
5 in the original proposal provided by Local 139.

6 Q. Sir, but the proposals that we were
7 discussing during this negotiation session were
8 the ones that are indicated in your notes of
9 18.1, et cetera, the notes indicate that at
10 least for the document requested by the union of
11 Sunbelt that these were the numbers assigned to
12 those articles and were being negotiated,
13 correct?

14 A. Yes.

15 Q. Turning the page to 6.6.

16 A. Page 6?

17 Q. 6 of 6, sir.

18 A. Okay.

19 Q. All right. And starting about the
20 third line down now granted in the far left-hand
21 corner I believe -- column -- excuse me -- you
22 had already testified that these numbers reflect
23 the union's original proposal, correct?

24 A. Correct.

25 Q. So even looking at those, sir, it says

1 21.2, 21.3, 21.4, 21.5, 21.6, 21.7, correct?

2 A. And 22.5.

3 Q. Correct. Sir.

4 A. Yes.

5 Q. But those appear -- at least the first
6 five numbers appear to be in numerical order for
7 that article, correct?

8 MR. WIESE: Objection, your Honor.

9 Same objection, I mean, as I made earlier. I
10 mean, just reading numbers into the record that
11 are easily readable.

12 JUDGE ROSAS: The problem that I have,
13 Counsel, is that we are now dealing with
14 impeachment and you are not contrasting it with
15 any of his -- any specific testimony he has
16 given today. You are drawing attention to
17 entries in the bargaining notes.

18 MS. HILL: That he already testified
19 to.

20 JUDGE ROSAS: He has adopted the notes,
21 sure. I am just not seeing the value of the
22 impeachment here, unless you are, you know, if
23 you are trying to draw an inconsistency with a
24 previous statement with something that is
25 reflected in his notes, I mean, that's --

1 MS. HILL: Yes, sir.

2 JUDGE ROSAS: I don't know why you need
3 to do that because you had comprehensive
4 examination as to what the notes reflect and
5 what they don't reflect, right?

6 MS. HILL: Correct.

7 JUDGE ROSAS: Okay. All right.

8 MS. HILL: And now you are giving me
9 permission to go look at the affidavit that he
10 had presented because the union attorney pointed
11 out he only used the --

12 JUDGE ROSAS: For the purpose of
13 establishing that something that he has
14 testified to with respect to his notes is not
15 credible.

16 MS. HILL: Or what he testified put
17 into a signed affidavit to the Board is not
18 credible either, sir.

19 JUDGE ROSAS: You know, if there is a
20 statement in there --

21 MS. HILL: Yes, sir.

22 JUDGE ROSAS: -- about, you know, how
23 many times he went to the ball park in 2019 is a
24 lie but it has nothing to do with what's in his
25 bargaining notes, it has limited utility.

1 MS. HILL: Well, for purposes of the
2 charges that Sunbelt is dealing with, for
3 example, I mean, the biggest one is that Sunbelt
4 was wasting time.

5 JUDGE ROSAS: Well, the charges
6 ultimately have to be supported by evidence but
7 we are not dealing with the charges. The
8 charges are this amorphous concept, legal
9 argument if you will, ultimately based on the
10 facts. So I just need you to be clear about
11 what it is that you need to distill from that
12 affidavit while this witness is still here to
13 establish that it is inconsistent with his
14 testimony today.

15 MS. HILL: And that's what I was
16 attempting to do.

17 JUDGE ROSAS: And at the same time,
18 Counsel, you -- look, at this point look you are
19 going to have to brief this case.

20 MS. HILL: Yes, sir.

21 JUDGE ROSAS: And you have been very
22 comprehensive going through all the notes with
23 this witness. What I am going to do at this
24 point is if you feel that there is anything
25 important in that affidavit, at this point you

1 bring those out through the witness and let's
2 try to just move on because you are going to --

3 MS. HILL: Correct.

4 JUDGE ROSAS: -- you are going to tie it
5 together later. I mean --

6 MS. HILL: And I appreciate you letting
7 me for this witness read the whole paragraph.

8 JUDGE ROSAS: I don't want to go
9 through the notes again. I don't want to go
10 through the notes again.

11 MS. HILL: I agree, sir. But I was
12 trying to point out a document he signed under
13 oath to support the charge filed by the union
14 that is inconsistent not only with his statement
15 but also with the notes that he had prepared
16 earlier.

17 JUDGE ROSAS: Okay.

18 MS. HILL: Earlier to this affidavit.

19 JUDGE ROSAS: Okay. Then --

20 MS. HILL: I think, sir, just with --

21 JUDGE ROSAS: It's -- you see it's a
22 general statement. You know, this is not about
23 whether the light was green or red at the
24 intersection when the two cars collided. Okay.
25 This is not, you know, specific to a specific

1 instance. It's a general -- it's a general
2 assertion that he made in that affidavit, right?

3 MS. HILL: A very incorrect general
4 assertion.

5 JUDGE ROSAS: About what the company
6 was and was not doing, what their routine was,
7 what they are doing as a delay tactic and what
8 was their methodology. I understand that. So
9 that's general.

10 MS. HILL: This supposedly along with
11 the other affidavits I am assuming is what the
12 NLRB found sufficient to draft a complaint,
13 correct?

14 MR. WIESE: I am not going to answer
15 that question.

16 JUDGE ROSAS: You know --

17 MS. HILL: One would make that
18 argument.

19 MR. WIESE: One would hope so, right?

20 MS. HILL: One would hope so.

21 JUDGE ROSAS: But, again, this is --

22 MS. HILL: This is significant.

23 JUDGE ROSAS: This is not about whether
24 I saw, you know, the witness, you know, beat the
25 complaining witness over the head with a bat at

1 a particular time at a particular location.
2 This is a general statement assertion by the
3 witness that you read about the respondent's
4 alleged dilatory tactics and so on, so we are
5 not going to go back into the treasure trove of
6 information to argue whether, you know,
7 statements that he made in his bargaining notes
8 on particular dates are consistent or not
9 consistent with that assertion that he made at
10 that time.

11 MS. HILL: Not consistent.

12 JUDGE ROSAS: And this is all very
13 general stuff.

14 MS. HILL: No. It's very specific,
15 sir, and I respectfully disagree.

16 JUDGE ROSAS: I am sure you can get
17 into specific stuff but that statement is
18 general. That statement is general.

19 MS. HILL: I respectfully disagree with
20 you, sir.

21 JUDGE ROSAS: Okay. Tell me what's
22 specific there about a specific date or a
23 specific incident.

24 MS. HILL: You are asking for a
25 specific -- he is putting them all together,

1 sir.

2 JUDGE ROSAS: Right. Right.

3 MS. HILL: All together, sir.

4 JUDGE ROSAS: Right. Right.

5 MS. HILL: Every single one.

6 JUDGE ROSAS: You get that in his
7 record as his prior statement and you have a
8 record that you already made, correct? Did you
9 leave something out before when you cross
10 examined from day one through the last day of
11 bargaining?

12 MS. HILL: Well, because we didn't have
13 this at the time I was doing the cross
14 examination of him regarding alleged
15 disorganized and dilatory tactic apparently that
16 he is outlining Paragraph 6 here, no, sir. I
17 did not go into it that way, sir.

18 JUDGE ROSAS: Into which way?

19 MS. HILL: Saying that we jumped from
20 article to article disorganized. Here in this,
21 this particular paragraph, he makes that
22 allegation. I just pointed out how in at least
23 one session prior to this affidavit he -- his
24 notes clearly reflect that we went article --
25 you know, through the subsections of a

1 particular article. We can do it for all of
2 them but your Honor doesn't want to do that at
3 this time. For briefing --

4 JUDGE ROSAS: But you examined him
5 about each of those notes, right?

6 MS. HILL: As I said before, sir, not
7 for purposes of saying that --

8 JUDGE ROSAS: Is the note not -- and
9 again, and I said this at the outset, I
10 cautioned the General Counsel and I said that it
11 also applied to cross examination and I gave you
12 a lot of leeway because I know you were building
13 on some questions as you went through these
14 notes with the witness as you had him read the
15 notes unnecessarily but at the same time for
16 your purposes getting to the point that you
17 needed to get to.

18 MS. HILL: Correct.

19 JUDGE ROSAS: You know, the thought
20 process is oftentimes working in these cases,
21 you know, I understand that, you know, the
22 immediate moment, you know, and you build on the
23 previous thought I am sure; so I gave you some
24 leeway but, again, if there is at this point
25 something specific in the notes that you think

1 you need to bring out at this point that you
2 haven't already discussed before, okay, in terms
3 of what's not clear from his notes, I mean, his
4 notes are his notes. They are in evidence.
5 They weren't questioned.

6 Now what you can do is -- what you can
7 do is you can try to attack the veracity of the
8 notes that they are inaccurate but at this
9 point, we are into argument. We are into
10 argument. You know, your version of what are
11 proposals. Their versions of what are proposals
12 and are not proposals. I mean, this is a lot of
13 argument. I am seeing very little factual
14 dispute here.

15 MS. HILL: Sir, I respectfully disagree
16 with your position on this and it's because this
17 particular paragraph out of this particular
18 affidavit, I understand there are other
19 affidavits, that was not something that had been
20 brought up during direct examination and was not
21 brought up on cross examination. I'm not going
22 to go any further than this February 21st
23 because I think it proves the point that this
24 rash generalization that he made in Paragraph 6
25 is not supported. As you said, this can be

1 pointed out in the post hearing briefs regarding
2 his notes.

3 JUDGE ROSAS: Okay. You are asking at
4 this point about this February 21st set of
5 notes?

6 MS. HILL: Right because it was based
7 on the objection --

8 JUDGE ROSAS: Hold on. Hold on. And
9 you would limit your questioning to that set of
10 notes as an example of any other notes that are
11 similarly structured would make the point that
12 you are trying to establish here.

13 MS. HILL: Right.

14 JUDGE ROSAS: Okay. I am going to
15 overrule. I am going to give counsel the
16 limited leeway to pursue that with respect to
17 the February 21st notes.

18 BY MS. HILL:

19 Q. And after that discussion, I'm sorry.
20 Mr. West, looking at and I apologize, I am not
21 sure if you had -- if I had asked the question
22 and you had answered it, for Page 6 of 6, the
23 articles -- subarticles that I had identified in
24 your notes from about quarter of the way --
25 well, from 19.2 down, those are -- appear to be

1 in chronological order, correct?

2 A. Up to the point of 19.7 to 20.5, yes.

3 Q. To 20.5. And if I am not mistaken, you
4 had testified earlier that this section of your
5 notes was from Sunbelt's proposal, correct?

6 A. Page 6?

7 Q. Page 6 of 6 from at 19.2 down.

8 A. Yes.

9 MS. HILL: Thank you, sir. All right.
10 No further questions.

11 JUDGE ROSAS: Okay. Any follow up?

12 MR. WIESE: Not from the General
13 Counsel, your Honor.

14 JUDGE ROSAS: Charging Party?

15 MR. RYAN: No, your Honor.

16 JUDGE ROSAS: Thank you, sir. You are
17 excused at this time. Please do not discuss
18 your testimony with anyone you previously made.
19 All right. Next witness. Off the record.

20 (Whereupon, a short recess was
21 taken.)

22 JUDGE ROSAS: On the record. Next
23 witness.

24 MR. WIESE: Your Honor, at this time
25 counsel calls Dan Marsolek to the stand.

1 JUDGE ROSAS: Sir, please raise your
2 right hand.

3 (Witness sworn.)

4 JUDGE ROSAS: Please have a seat, state
5 and spell your name and provide us with an
6 address.

7 THE WITNESS: My name is Daniel,
8 Marsolek, D-A-N-I-E-L. M-A-R-S-O-L-E-K. Home
9 address?

10 JUDGE ROSAS: Business or home is fine.

11 THE WITNESS: 33719 Lynn Lane. That's
12 Burlington, Wisconsin.

13 JUDGE ROSAS: Burlington, Wisconsin?

14 THE WITNESS: Yes, sir.

15 DANIEL MARSOLEK,
16 after being first duly sworn, deposeth and saith
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. WIESE:

20 Q. Mr. Marsolek, what's your current
21 occupation?

22 A. I am a business agent for the Operating
23 Engineers Local 139.

24 Q. What do you do as a business agent with
25 Local 139?

1 A. I go out in the field and I represent
2 the members. Make sure that the contract is
3 being upheld and that if they have any questions
4 or issues with pay or anything related to that I
5 guess.

6 Q. How long have you been a business agent
7 with Local 139?

8 A. Three years.

9 Q. Have you held any other positions with
10 Local 139 besides being a business agent?

11 A. Prior to being a business agent, I was
12 the crane instructor at our formal training
13 center for two years.

14 Q. Prior to that, any positions?

15 A. Certified crane operator in the field.
16 Been with the Union 16 years total.

17 Q. As a crane operator, were you a union
18 member?

19 A. Yes, sir.

20 Q. Okay. When you are a crane operator,
21 what sort of equipment did you work with?

22 A. Mostly heavy equipment, large hydraulic
23 cranes, crushing cranes, power driving
24 equipment, excavators, dozers, backhoes, aerial
25 lifts. All that stuff.

1 Q. Okay. And when you had to move
2 equipment using your crane or the cranes that
3 you operated, was the weight of the equipment
4 that you worked with important?

5 A. Yes, very much so.

6 Q. Why is that?

7 A. If I don't know the weight of the
8 equipment I could very easily cause catastrophic
9 failure of the crane causing it to tip over or
10 possibly hurt somebody.

11 Q. What were the types of equipment that
12 you moved as a crane operator?

13 A. Again, aerial lifts, excavators,
14 dozers, gang forms, concrete buckets, I mean,
15 large wooden panels.

16 Q. Are you familiar with the respondent in
17 this case Sunbelt Rentals?

18 A. Yes, sir.

19 Q. How are you familiar with them?

20 A. I know they are a rental company in the
21 area and that we have been negotiating with them
22 for 15 months or whatever.

23 JUDGE ROSAS: Sir, keep your voice up.

24 BY MR. WIESE:

25 Q. Are you the business agent for any

1 bargaining units at Sunbelt?

2 A. Yes, I was. For the seven members that
3 were there.

4 Q. And which unit was that?

5 A. Franksville shop.

6 Q. Are you aware of Sunbelt's decision to
7 terminate the entire bargaining unit at the
8 Franksville facility?

9 MS. HILL: Objection. Form.

10 JUDGE ROSAS: I'll allow that.

11 THE WITNESS: Yes.

12 BY MR. WIESE:

13 Q. How are you aware of this decision?

14 A. It was decided at negotiating -- at the
15 end of negotiations that they decided to just --
16 well, I guess I don't know exactly how I was
17 told it happened but it happened through -- I
18 guess I don't know. I don't know how to respond
19 to that.

20 Q. I'd like to direct your attention to so
21 if you go into that, there is going to be a
22 stack of documents there. If you dig down a
23 ways into it, there is a document marked at the
24 bottom GCX 17. They should be in numerical
25 order.

1 JUDGE ROSAS: Sir, here you go.

2 MR. WIESE: Thank you.

3 BY MR. WIESE:

4 Q. That was 17?

5 A. Yep.

6 Q. Okay. Do you recognize this document?

7 A. Yes. It looks familiar.

8 Q. Okay. And was this document how you
9 discovered the --

10 MS. HILL: Objection. Leading.

11 JUDGE ROSAS: Sustained.

12 BY MR. WIESE:

13 Q. Have you seen this document?

14 A. Yes, I have.

15 Q. Prior to the -- so you can set that
16 document aside. Prior to the elimination of the
17 bargaining unit at the Franksville facility, had
18 you visited that facility?

19 A. No.

20 Q. You had never been to the Franksville
21 facility prior to that date?

22 A. Not prior to negotiations, no.

23 Q. But I am talking about prior to the
24 date of that letter on August 7th.

25 A. Oh, yes. Yes. I was. I'm sorry. I

1 misunderstood you.

2 Q. And I'll just ask you please let me
3 finish talking before you start answering
4 otherwise it will cause issues, okay?

5 In what capacity have you visited that
6 facility?

7 A. As part of the negotiating committee.

8 Q. And after the elimination of the
9 bargaining unit, did you continue to visit the
10 Franksville facility?

11 A. Not on the property, no.

12 Q. Did you continue to monitor the
13 facility?

14 A. Yes. Yes, I did.

15 Q. Why did you continue to monitor the
16 facility?

17 A. At the end of negotiations, they
18 decided to, as the letter stated, to change the
19 role of the shop and we wanted to make sure that
20 that if it was -- if indeed it was going to
21 happen, we wanted to make sure it happened.

22 Q. And when did you start monitoring the
23 operations at the Franksville facility?

24 A. Within -- I'd say within two weeks
25 after that last negotiation session, middle of

1 Augustish.

2 Q. How often have you visited the
3 Franksville facility since that time since the
4 middle of August?

5 A. I don't know if I can give you an
6 accurate number on how many times; but being
7 that it's in my area that I monitor as a
8 business agent, I would make trips there weekly.

9 Q. Okay. When you would check on the
10 Franksville facility, did you have a process
11 that you followed?

12 A. I did. I did. I would come in cross
13 the frontage road between the Franksville shop
14 of Sunbelt's and Ahern. I would pull to the
15 back of the building, take a picture of the
16 vehicles on site just to see to try to build
17 that who is there, what's going on and then I
18 proceed to go across the street on Fuhrman Drive
19 and watch the facility from there.

20 Q. Was there a specific time when you
21 visited the facility?

22 A. No, sir. The times would vary
23 throughout the day.

24 Q. I'll show the witness what's been
25 marked as General Counsel Exhibit 25.

1 Mr. Marsolek, do you recognize this document
2 here and take a moment to review it.

3 A. Yes. It appears to be pictures that I
4 took. I couldn't tell you if all of them are
5 but it appears to be pictures.

6 Q. Okay. And the numbers in the bottom
7 right-hand corner of the photos, do you see
8 those numbers starting on the first page?

9 A. Yes, I do.

10 Q. Okay. Continuing throughout the
11 document. Based off of your review, do those
12 times indicate when the pictures were taken?

13 A. Yes, they do.

14 MR. WIESE: I'll offer General Counsel
15 Exhibit 25.

16 JUDGE ROSAS: Voir dire?

17 MS. HILL: Yes, sir.

18 VOIR DIRE EXAMINATION

19 BY MS. HILL:

20 Q. Mr. Marsolek, did you take all of these
21 photos yourself, sir?

22 A. Without reviewing all of them, it
23 appears I did, yes.

24 Q. Well, if you would please review them
25 so we don't have an issue later on.

1 A. Yes. It appears I did.

2 Q. And because there is a variety of dates
3 and times where it's styled, how did those dates
4 and times get put on these photos?

5 A. The red ones I believe were put on by
6 our -- one of the gals in the office that helped
7 put these pictures together. And the yellow
8 ones were the date stamp from my camera.

9 Q. So how -- if the red ones to use your
10 words were done by the gals in the office, did
11 those dates and times reflect when they
12 processed this photo?

13 A. Yes. The date stamp reflected the
14 digital timestamp that's on the picture itself.
15 At the time when the pictures were taken, the
16 date stamp was not on the camera. It was not
17 turned on.

18 Q. So how do those red dates and times
19 get -- do they reflect accurately when you took
20 the photos?

21 A. Yes, they do. There is a digital date
22 stamp with every picture that was taken. The
23 digital date stamp is then put on there.

24 Q. The camera can automatically if you
25 press the right button have the date stamp on

1 the time on it, correct?

2 A. Yes.

3 Q. All right. Now the ones that are in
4 red differ from if you look at 37 of 45 and that
5 it appears at least on 37 of 45 to be in
6 military time, correct?

7 A. Yes.

8 Q. But No. 1 appears what time is
9 reflected there, sir?

10 A. It appears to be 2:03.

11 Q. Morning or afternoon, sir?

12 A. It's light out. I would assume
13 morning. It's light out. I would say it's
14 afternoon.

15 Q. Afternoon. Okay. So did you press a
16 button on your camera in order to have military
17 time for some of the photos and then nonmilitary
18 time for other photos?

19 A. No. I just -- once we figured out how
20 to do a time stamp on it is when I put the time
21 stamp on. I had to click a button that said
22 time stamp on and time stamp off.

23 Q. And when did you press that button?

24 A. September 6th at 7:44.

25 Q. So I am still trying to figure out how

1 can the times and dates on the previous photos
2 be accurate as to when you took them.

3 A. The photo -- like I said, the photo has
4 a digital stamp. It may not be on the picture
5 at first but it has an actual --

6 Q. Okay. Sir, I don't want to -- Well,
7 I'll lead you, okay. Did you give the camera to
8 the as you said the gals in the office?

9 A. What I gave her was the memory card
10 from my camera.

11 Q. And then did she then place it into her
12 computer?

13 A. I think it was done -- What happened
14 was I have the memory card and the memory card
15 then was placed into my phone and then it was
16 sent over the airwaves digitally to her because
17 it came in the memory card, I'm sorry. That's
18 how it went.

19 Q. And did you verify that the dates and
20 times on Pages 1 through 5 were correct as to
21 when you took these photos?

22 A. Yes, I did.

23 Q. And when did you do that, sir?

24 A. I don't remember the exact date it was
25 done on. Whenever we printed these pictures

1 out. Maybe when we were subpoenaed for it.

2 Q. Okay. When the subpoena from Sunbelt
3 was issued?

4 A. I couldn't accurately tell you. I
5 don't know. I don't know for sure.

6 MS. HILL: All right. Your Honor, my
7 objection is going to be with respect to the
8 first five pages of this exhibit, I don't seem
9 to hear enough of a foundation to accurately
10 reflect that the times as questioned on direct
11 examination are accurate.

12 MR. WIESE: Well, your Honor, the
13 witness testified that to his knowledge the
14 stamps on those photos is coming from digitally
15 encoded information that's in the file. He has
16 also independently testified at the very
17 beginning of his testimony that the time and
18 date stamps in all of these pictures that he
19 went back and reviewed all of them is accurate
20 based off of his independent recollection of
21 when he took the pictures so I believe that
22 there has been sufficient foundation laid.

23 JUDGE ROSAS: Okay. The witness has
24 testified that is the date and times reflected
25 on these documents you are just referring to 1

1 through 5 or all of them?

2 MS. HILL: Yes, sir, that is the
3 question because different color, different
4 person handled them.

5 JUDGE ROSAS: Sir, I don't recall if
6 this was explained for the record, just to make
7 sure, so the first set of numbers reflect what?

8 THE WITNESS: That would be the date.

9 JUDGE ROSAS: And then the second set
10 of numbers?

11 THE WITNESS: Would be the time.

12 JUDGE ROSAS: 8:08 is the time?

13 THE WITNESS: No. The first set of
14 numbers would be the 29th of August.

15 JUDGE ROSAS: Yep.

16 THE WITNESS: 2019.

17 JUDGE ROSAS: Okay. The 29th then 08
18 stands for what?

19 THE WITNESS: Would be the month of
20 August.

21 JUDGE ROSAS: You'd have 2019 and then
22 the four numbers that follow that are the time?

23 THE WITNESS: Correct, sir.

24 JUDGE ROSAS: Okay. Counsel, I am
25 going to overrule the objection. Based on the

1 testimony, there is sufficient foundation
2 indicating that it is more likely than not that
3 these documents were generated by the witness'
4 operation of a camera and their transmission
5 with date stamps -- date and time stamps on them
6 to someone to then produce them. Like I said,
7 there is sufficient information there for their
8 receipt.

9 If you want to probe it on cross
10 examination further or submit any other proof to
11 show that they are not reliable for whatever
12 reason, you're free to do so as far as the
13 weight, if any, that I should give these
14 documents but I am going to receive Pages 1
15 through 45 of GC 25 over objection.

16 (GCX 25 received.)

17 MR. WIESE: So, Mr. Marsolek --

18 JUDGE ROSAS: Off the record for a
19 minute.

20 (Whereupon, a short recess was
21 taken.)

22 JUDGE ROSAS: Back on.

23 DIRECT EXAMINATION (resumed)

24 BY MR. WIESE:

25 Q. Mr. Marsolek, I'd like to have you look

1 at starting off with Pages 1 through 4 as a set
2 of General Counsel Exhibit 25.

3 A. Okay.

4 Q. Where did you take these pictures from?

5 A. So I would be on the northwest corner
6 of Fuhrman and the west frontage road facing the
7 Sunbelt shop.

8 MS. HILL: Excuse me. Objection to the
9 question. I see the witness looking at the
10 corner. Is there a map or something there, sir?

11 THE WITNESS: There is a map right
12 here.

13 MS. HILL: Oh, okay. So he is
14 referencing that. I didn't know you had
15 requested him to look at that, too.

16 THE WITNESS: When I took those papers
17 away, that was there.

18 MS. HILL: Okay.

19 BY MR. WIESE:

20 Q. Well, the document is in evidence. If
21 you are -- I mean, if you'd like to indicate on
22 General Counsel Exhibit 16 as you are -- as I
23 asked you where pictures are taken --

24 A. Sure.

25 Q. -- you're welcome to do so. You'll

1 just have to describe it in such a way that it
2 makes sense because nobody is going to be
3 actually seeing -- seeing you point to anything.

4 So can you explain where you took the
5 pictures from in Pages 1 through 4 of General
6 Counsel Exhibit 25?

7 A. On Pages 1 through 4, I parked my
8 vehicle on the northwest corner of Fuhrman and
9 the west frontage road. I was facing northwest
10 at the front of the Sunbelt facility in
11 Franksville.

12 Q. And what is -- what are these pictures
13 showing at the Franksville facility?

14 A. This picture shows --

15 Q. If you are referring to a specific
16 picture --

17 A. We'll start with picture one. In the
18 center of the picture, there is a skid loader, a
19 Trak skid loader. It's a piece of heavy
20 equipment. There is a gentleman there appears
21 to be a Sunbelt employee. I never seen this
22 individual before. He was not part of the
23 bargaining unit and he appears to be working on
24 a piece of Sunbelt equipment. He has a grease
25 gun.

1 Q. In which picture does he have a grease
2 gun?

3 A. In picture No. 2 there is a grease gun,
4 in 3 and 4. The reason he would have a grease
5 gun is to do preventive maintenance on a piece
6 of equipment very similar to what the bargaining
7 unit members would have done while they were
8 working there.

9 Q. So let's -- The piece of equipment
10 that's being worked on in those pictures, what
11 type of equipment is that?

12 A. Commonly referred to as a skid loader
13 or a skid-steer. There is a Trak machine.

14 Q. I'd like to direct your attention now
15 to on Page 5 of that exhibit. Where did you
16 take this picture from?

17 A. This picture again was at the same
18 location on this northwest corner of Fuhrman and
19 the west frontage road also known as 27th
20 Street. You can see in the center of the
21 picture there the street sign, there is a stop
22 sign there. It's a dead end road so there is
23 not much traffic there. Again, facing towards
24 the Sunbelt facility in Franksville.

25 Q. What led you to take this picture here?

1 A. So at the last negotiation session or
2 one of the last negotiation sessions Jason
3 Mayfield indicated that this shop would only be
4 an -- it would be something -- a shop of just a
5 small drop-off or a pick-up for just your
6 average household usage. They wouldn't need
7 drivers, they wouldn't need mechanics anymore
8 and this is the Sunbelt lowboy that picks up
9 heavy equipment.

10 Q. Was this Sunbelt lowboy at the --

11 A. Yes.

12 THE REPORTER: I'm sorry. Could I get
13 the question repeated, your Honor?

14 BY MR. WIESE:

15 Q. Was this Sunbelt lowboy leaving the
16 Franksville facility?

17 MS. HILL: Objection. Leading.

18 JUDGE ROSAS: Was this --

19 BY MR. WIESE:

20 Q. Was this Sunbelt lowboy truck in the
21 picture leaving the facility?

22 JUDGE ROSAS: Or entering the facility.

23 THE WITNESS: Yes.

24 MS. HILL: So objection. Leading.

25 JUDGE ROSAS: Which one what was it

1 doing?

2 THE WITNESS: It was leaving.

3 BY MR. WIESE:

4 Q. If you go on to General Counsel, or
5 excuse me, Page 6 of General Counsel Exhibit 25,
6 do you recall where you took this picture from?

7 A. Yes, I do. This was if Fuhrman were to
8 continue between Sunbelt and the Ahern facility
9 there, it goes back to a dead end road. That
10 road leads you up to Ahern's facility or down to
11 a fill site where AW Oaks would drop off
12 material to -- they are making a pad back there
13 for another, I don't know, it's another project.

14 Right back there there is an -- it's
15 the back side of Sunbelt facility so I'd be
16 facing -- I would be facing east on the back
17 side of the building.

18 Q. So you would be -- just to clarify, so
19 you would be facing towards the Interstate 94
20 and Interstate 41 right there?

21 A. Correct.

22 Q. Okay.

23 A. Behind the facility.

24 Q. And what does this picture show?

25 A. In this picture, it's a picture of a

1 Sunbelt's mechanics' truck. I don't know for
2 sure if this is the exact same mechanics' truck
3 that was given to one of our -- or that our
4 bargaining members drove. It's very similar and
5 at this point in this picture we no longer had
6 mechanics at that facility.

7 Q. How could you identify it as a
8 mechanic's truck?

9 A. You can see there are air tanks on the
10 back. It's got the side compartments for tools
11 and things like that and I have also spoke with
12 the member that used to work on this piece of
13 equipment when he was in that truck when he was
14 a member or still working at the facility.
15 Maybe not this truck but a truck exactly like
16 this truck in the field.

17 Q. I'd like to have you look at General
18 Counsel's Exhibits 7 through 10. Actually,
19 start 7 through 9 first of all. Where did you
20 take these pictures from?

21 A. This would be at the northwest corner
22 of Fuhrman and the west frontage road facing the
23 Sunbelt facility.

24 Q. And what do those pictures in General
25 Counsel -- on Pages 7 through 9 of General

1 Counsel's Exhibit 25 what are they showing?

2 A. These pictures show a Sunbelt lowboy
3 leaving the facility with equipment.

4 Q. Do you recognize the individual driving
5 the truck in Pages 7 and 8?

6 A. I do not.

7 Q. Would you recognize him if it he was a
8 member of the bargaining unit at Franksville?

9 A. Yes, I would.

10 Q. What was his truck doing as you were
11 taking these pictures?

12 A. Still on 7 through 9? Leaving the
13 facility.

14 Q. Yes. 7 through 9.

15 A. Came in, unloaded and left loaded.

16 Q. And going on to Page 10 of General
17 Counsel Exhibit 25.

18 A. Okay.

19 Q. Where did you take this picture from?

20 A. This was the same location, northwest
21 corner Fuhrman and west frontage road. These
22 pictures actually kind of go together -- go
23 together. They were right at the same time.

24 Q. Okay. Was this the truck -- which
25 truck came first?

1 A. The Sunbelt one. This is a third-party
2 trucking company that they have used in the
3 past.

4 Q. And what was the truck doing in Page 10
5 of General Counsel Exhibit 25?

6 A. Leaving the facility loaded with heavy
7 equipment, a job that the bargaining members
8 unit did prior to being laid off.

9 Q. If you go to Page 11 of General Counsel
10 Exhibit 25, where did you take this picture
11 from?

12 A. This was at the northwest corner of
13 Fuhrman and the west frontage road facing the
14 front side of the Sunbelt facility.

15 Q. And what does this picture show?

16 A. This just shows the activity in the
17 shop and outside the shop that there is actually
18 so much going on, there is things outside. You
19 can see on the far left side of the picture
20 there appears to be a gentleman inside the shop.
21 I don't know what he is doing but he is a
22 Sunbelt -- I would only assume a Sunbelt
23 employee. No one else should really be in
24 there.

25 Again, it just shows what's in front

1 and inside the shop, that work is going on.
2 Work that was done prior to the gentlemen being
3 laid off that were part of the bargaining
4 members.

5 Q. Go to pages 12 and 13 of the same
6 exhibit. Where did you take these pictures
7 from?

8 A. This is the northwest corner of Fuhrman
9 and west frontage road facing the Sunbelt
10 facility.

11 Q. And what do these pictures show?

12 A. It's just -- it's a Sunbelt state truck
13 in the center of the picture with a piece of
14 Sunbelt equipment on it, on the trailer, on the
15 back coming to the facility, turning onto
16 Fuhrman Street.

17 Q. Which picture shows the truck coming
18 into the facility?

19 A. This would be Page 12 of 45.

20 Q. What about 13 of 45, what does that
21 show?

22 A. This is a picture of that same vehicle
23 leaving the facility.

24 Q. Go to 14 and 15 now. Starting with 14,
25 where did you take this picture from?

1 A. This is the northwest corner of Fuhrman
2 and west frontage road.

3 Q. What does this picture show?

4 A. In the center of the picture there is a
5 piece of equipment that's inside the shop. In
6 some of these other pictures, if you look at the
7 time stamp, you'll see that these are pictures
8 of the front garage door buildings or front of
9 the garage doors, there is different equipment
10 in front of these doors all the time meaning
11 that things are continuing to take place there
12 whether it's working on or checking in or
13 checking out or refurbishing.

14 Q. And when you were there, was this
15 machine being worked on?

16 A. Yes, it was. If you look at the very
17 bottom of the picture right below that piece of
18 equipment, it appears there is a rag or
19 something, there is some tools around. People
20 are walking around it at times.

21 Q. And when you are talking about the
22 piece of equipment, just to clarify, which piece
23 of equipment are you talking about?

24 A. On Page 14 in the center of the garage
25 door, it's a wood chipper.

1 Q. Is that the green piece of equipment?

2 A. Yes, it is.

3 Q. Going on to General Counsel Exhibit 15,
4 where did you take this picture from?

5 A. This is the northwest corner of Fuhrman
6 and the west frontage road facing the Sunbelt
7 facility, in the front of side of the Sunbelt
8 facility. This vehicle left Sunbelt and was
9 heading north on the west frontage road.

10 Q. Is that a Sunbelt truck towing the
11 equipment there?

12 A. Yes. I believe it is.

13 Q. How can you tell?

14 A. I have seen this vehicle quite often at
15 the facility through my time coming and going.
16 I believe it's maybe a salesman or somebody that
17 works there.

18 Q. What type of equipment is that on the
19 back?

20 A. To tell you the truth, I don't know
21 what it is. It could be a floor scrubber, but I
22 don't have extensive knowledge of what that is.
23 I know it's used in an industrial setting inside
24 a building.

25 Q. So I'd like to look at Pages 16

1 through 20 as a set now. Where did you take
2 these pictures from?

3 A. This was at the northwest corner of
4 Fuhrman Street and west frontage road facing the
5 Sunbelt facility.

6 Q. And what are these pictures showing?

7 A. Once again, it's showing that there is
8 work being done inside the Sunbelt facility.
9 Whether it's preventive maintenance or
10 maintenance or testing or something along those
11 lines with a mechanic very similar to the type
12 of work that the bargaining unit members did
13 while they were employed with Sunbelt.

14 If you look at the time stamps, they
15 are a couple minutes apart to show the movement
16 of equipment and things of that nature. Not
17 that it just sat there all day.

18 So in the first picture, you can tell
19 that the center of the picture there is a
20 gentleman in a green shirt below the aerial
21 lift, the aerial lift is extended up and that
22 was at 9:35; and then the second picture 9:36,
23 he is still doing the same thing and if you get
24 to Exhibit No. 19 or Page 19, that aerial lift
25 is down a little bit and to 20 it's all the way

1 down to the ground.

2 Q. Do you recognize the individual in
3 those pictures?

4 A. I don't know that individual, no, sir.

5 Q. Is that individual a member of the
6 bargaining unit?

7 A. No, he is not. I do know the
8 bargaining members and that's not one of them.

9 Q. What about in Page 18 of that exhibit,
10 is that a different -- what is that showing?

11 A. It's just another piece of equipment
12 inside the shop. There is a gentleman standing
13 there as well. Sunbelt employee, showing that
14 there is different pieces of equipment inside
15 the shop and different dates at times throughout
16 this process.

17 Q. I'd like to look at Pages 21 and 22.
18 Where did you take these pictures from?

19 A. The northwest corner of Fuhrman and the
20 west frontage road facing the Sunbelt facility.

21 Q. What do these pictures show?

22 A. Sunbelt lowboy leaving the facility
23 with the truck driver and Sunbelt employee, not
24 one of the bargaining members.

25 Q. Looking at Page 23, where did you take

1 this picture from?

2 A. This is the northwest corner of Fuhrman
3 and the west frontage road facing the Sunbelt
4 facility.

5 Q. On Page 23?

6 A. Right in the center of the picture is
7 the actual wooden post of the stop sign that's
8 right there.

9 Q. Okay. What does this picture show?

10 A. I believe it to be a salesman's truck
11 or Sunbelt employee's vehicle with a Sunbelt's
12 light plant on the back of it. Maybe delivering
13 something.

14 JUDGE ROSAS: A light what?

15 THE WITNESS: A light plant. They use
16 it for night work on construction sites,
17 sometimes a generator as well, maybe both.

18 BY MR. WIESE:

19 Q. What leads you to believe that it's a
20 Sunbelt truck towing that piece of equipment?

21 A. I have seen this vehicle at the site
22 quite often again as well so it could be a
23 salesman or somebody that works there.

24 Q. Looking at Page 24 of the exhibit,
25 where did you take this picture from?

1 A. This was on the west frontage road a
2 little bit down it would be north of Fuhrman
3 Street more directly in front of the facility to
4 get a better shot inside the garage to show that
5 there is work being done on various pieces of
6 equipment inside there. It's kind of hard to
7 tell but in the center of the picture, I believe
8 there is a mechanic standing there it would be
9 on the left side of that piece of equipment.
10 The hood is kind of angled upward. Generally
11 the only time you would be doing stuff like that
12 is if you are working on a piece of equipment.
13 It's very vague but it's there.

14 Q. And where is the individual located in
15 the picture?

16 A. Just off center of the garage door.
17 There is a set of gauges directly in the center
18 just to the left of those gauges, you can kind
19 of make out a shirt and there is a hand down at
20 the bottom just below that cyclone fence.

21 JUDGE ROSAS: Can you show me?

22 THE WITNESS: The top rail of the
23 cyclone fence, here is the gentleman's hand,
24 here's his shoulder, there is his head, there is
25 his hood.

1 JUDGE ROSAS: Show counsel what you
2 were just referring to. Turn it around.

3 THE WITNESS: So right here in the
4 center of the picture, there is the gauges for
5 the piece of equipment, there is the shoulder of
6 the gentleman and his head, here's his hand,
7 here's the hood that's up. It's hard to tell
8 because of the shadowing but that is what I
9 believe to be the mechanic working on a piece of
10 equipment there. It was easier to see when I
11 was standing there opposed to the picture or
12 sitting in my car.

13 BY MR. WIESE:

14 Q. On Page 25, where did you take this
15 picture from?

16 A. This picture was taken from my vehicle
17 heading south on the west frontage road. It
18 would be on the northern side of the property
19 heading south on the frontage road looking at
20 their lot. Their lot where all the equipment is
21 kept.

22 Q. And what does this picture show?

23 A. This picture shows it's a tractor
24 loader backhoe of Sunbelt's. It's a different
25 color from the rest of their equipment. I did

1 notice that some of the equipment started to
2 show up as different colors but what caught my
3 eye about this picture is back to the date when
4 Jason Mayfield said they were going to move on
5 with the shop to just a will-call facility, no
6 longer a delivery center, he did let us know
7 that it would be small equipment being picked up
8 by homeowners and things like that.

9 Well, this is a very large piece of
10 heavy equipment that needs specialty tooling to
11 pick up. Your average homeowner is not going to
12 be able to pick that piece of equipment up on
13 his trailer in a standard pickup truck. You are
14 going to need extensive knowledge to be able to
15 pick this thing up, tie it down and travel down
16 the road with it.

17 Q. Going on now to Pages 26 through 28 of
18 the exhibit, where did you take these pictures
19 from?

20 A. These pictures would be taken on the
21 back side of the facility facing east towards
22 the interstate. I pulled my vehicle in there
23 and turned around, very similar to where I took
24 the pictures of the parking lot at times to
25 document the vehicles that were there.

1 Q. And what do these three pictures show?

2 A. These pictures show in Picture 1 of 26
3 there is a gentleman that's bent down doing some
4 work to a skid loader. You know, it's a --
5 being in heavy equipment my whole life, it's
6 very similar to a position you would take to
7 grease or work on a piece of equipment, not so
8 much the skid loaders themselves but the
9 excavator in the middle, the yellow one with the
10 large boom on it, again, that's a very large
11 piece of heavy equipment. That's not something
12 your homeowner is just going to go rent to do
13 some work at his house. That's pretty big
14 equipment, so, again, I was just documenting
15 that this facility is still continuing to hold
16 on to or carry heavy equipment.

17 Q. And going on to Page 29 of the exhibit,
18 where did you take this picture from?

19 A. This was at the northwest corner of
20 Fuhrman and west frontage road.

21 Q. And what does this picture show?

22 A. It shows a very large excavator similar
23 to the size of the one in the last picture. In
24 the center of the picture, you can just make out
25 the boom. It says Deere on it with the Sunbelt

1 logo. That's a pretty good size excavator but
2 what caught my eye more so in this picture on
3 the far left you can see the what's known in the
4 industry as a telehandler. It's a piece of off
5 road. It's very -- it's an off road forklift
6 basically is what it is. It's right here. It's
7 right there on the left. It's got the rubber
8 tires.

9 Q. Let the record reflect that the witness
10 is pointing to the piece of equipment with
11 Skytraks?

12 A. Yep. Skytraks. It's a JLG. It's,
13 again, a very large piece of equipment.
14 Something that a homeowner is not going to come
15 rent for a business. It's just too big. I
16 would assume that's about a 10,000 pound machine
17 as far as its lifting capacity.

18 Q. Looking at Pages 30 through 32 of the
19 exhibit, where did you take these pictures from?

20 A. This is the northwest corner of Fuhrman
21 and west frontage road as well facing the front
22 of the building.

23 Q. And what do these pictures show?

24 A. This is a third party that is
25 delivering equipment for bringing equipment back

1 to the Sunbelt facility in Franksville. This is
2 also the work that was being done by bargaining
3 unit members when there is no work at the
4 facility.

5 Q. If you look at Page 33 of the exhibit,
6 where did you take this picture from?

7 A. This was the northwest corner of
8 Fuhrman and west frontage road facing the front
9 of the Sunbelt facility.

10 Q. What does this picture show?

11 A. It's two employees of Sunbelt bringing
12 equipment to the garage doors. They were
13 bringing things into the shop. They are not
14 bargaining unit members. This is the work that
15 the bargaining unit members used to do when they
16 worked there.

17 Q. Page 24 of 34 of the exhibit, where did
18 you take this picture?

19 A. This was the northwest corner of
20 Fuhrman and the west frontage road as well.

21 Q. And what does this picture show?

22 A. This is documenting another large piece
23 of Sunbelt equipment at the facility. It could
24 be a mechanic or a truck driver in a piece of
25 equipment, something that Sunbelt employees used

1 to do when they were bargaining unit members
2 there.

3 Q. Is the individual in that picture a
4 member of the bargaining unit?

5 A. He is not, no.

6 Q. And going on to Page 35, where did you
7 take this picture from?

8 A. This is the northwest corner of Fuhrman
9 and west frontage road.

10 Q. What does this picture show?

11 A. It shows the large excavator in the
12 back. The yellow one on the right-hand side it
13 says Deere across the boom. There is also a
14 different colored gen -- or air compressor
15 there. It's not green like the rest of the
16 Sunbelt equipment. It's orange. It's just
17 showing the different -- the whole time it's
18 always had green equipment and now they are
19 starting to get into equipment that's no longer
20 green. It has very small little Sunbelt decals
21 on them.

22 Q. If you go over to Pages 36 through 39
23 of the exhibit, where did you take these
24 pictures from?

25 A. This is northwest corner of Fuhrman and

1 the west frontage road as well. This 36
2 through 39, if we can jump back to 34 all kind
3 of coincide. That is the excavator that is on
4 the back of this Sunbelt vehicle.

5 If you go to Page 34, that is the same
6 excavator. They put it on that vehicle. I
7 watched it happen. I was there in person to see
8 it. That's how those pictures kind of go
9 together.

10 Q. And what was this truck doing Pages 36
11 through 39?

12 A. The truck -- the Sunbelt truck lowboy
13 entered the facility empty and then loaded that
14 piece of equipment -- those two pieces of
15 equipment on and then left the facility to make
16 a delivery. As you can see, it requires a large
17 truck and lowboy to haul that type of equipment.
18 It's, again, something you are not going to get
19 from a homeowner.

20 Q. What's the other piece of equipment on
21 that trailer?

22 A. On the front side of the truck it says
23 it's a Skyjack. It's an aerial lift basket used
24 to reach higher elevations like construction
25 sites. It's much safer than a ladder.

1 Q. If you go now to General Counsel
2 Pages 40 through 45 of the exhibit, where did
3 you take these pictures from? Were they all
4 taken from the same location?

5 A. Yes, sir. They were both all taken
6 from the northwest corner of Fuhrman and west
7 frontage road. These pictures all coincide
8 together as well going back to 34.

9 Q. And can you explain what's going on in
10 these pictures?

11 A. It's just, again, showing that this
12 third-party company is hauling equipment out of
13 the Sunbelt facility and Sunbelt themselves is
14 hauling equipment out of the facility where we
15 were told that it would no longer happen.
16 That's one of the reasons they didn't need the
17 bargaining members anymore.

18 Q. And the piece of equipment on the back
19 of the truck, I think the best picture is on
20 Page 43 of the exhibit. What type of equipment
21 is that?

22 A. It's a fairly large John Deere
23 excavator. It's a 135G Trak machine. It's a
24 fairly good size for construction equipment.
25 It's not the biggest I have seen but it's

1 definitely not a mini excavator as the terms go.

2 Q. And if you go to Pages 44 and 45 of the
3 exhibit the last two pages --

4 A. Yes.

5 Q. -- there is another truck -- there is
6 another -- there is two trucks in the picture,
7 right?

8 A. Yes. Both these vehicles came in empty
9 and they left loaded for delivery or wherever
10 they were going.

11 Q. And the green truck on the right-hand
12 side of the picture, is that the same truck that
13 was shown in on Pages 36 through 39 of the
14 exhibit?

15 A. Yes. Yes.

16 Q. Okay.

17 A. What happened -- what happened was the
18 green truck left first, came back and then they
19 teamed up and left together.

20 Q. Mr. Marsolek, do these pictures in
21 General Counsel Exhibit 25 represent all the
22 pictures that you have taken of the Sunbelt
23 facility?

24 A. No. They do not.

25 Q. How many pictures in total have you

1 taken of that facility?

2 A. Quite a few. An exact number, probably
3 over a thousand.

4 Q. And are the pictures in General Counsel
5 Exhibit 25 are they representative of the
6 thousand plus pictures that you have taken at
7 the Sunbelt facility?

8 A. Yes, sir.

9 Q. Over what period of time would you have
10 taken those pictures?

11 A. It would have started shortly after mid
12 August I would say until I could have been out
13 there yesterday taking pictures because it's
14 still going on. When I drove to my -- I had an
15 appointment in town, I drove past the facility.
16 One of the third-party trucks that was in this
17 picture -- in these pictures was on site getting
18 loaded up.

19 Q. And when did you do that?

20 A. This was yesterday. It was -- what was
21 the date? Whatever the date was yesterday.
22 We'll say around 3:00 o'clock.

23 JUDGE ROSAS: Are you testifying to
24 something you saw that we don't have a picture
25 for?

1 THE WITNESS: That's correct.

2 JUDGE ROSAS: All right. Are you going
3 to put a picture in for that?

4 MR. WIESE: I didn't want to overburden
5 the record with photographs.

6 JUDGE ROSAS: That's not the best
7 evidence.

8 MR. WIESE: Okay. No further
9 questions.

10 JUDGE ROSAS: Charging Party, anything?

11 MR. RYAN: No. No. Thank you, your
12 Honor.

13 JUDGE ROSAS: Okay. Respondent, cross?
14 Let's deal with that at the outset so there are
15 no problems. Is there an affidavit?

16 MR. WIESE: Yes.

17 JUDGE ROSAS: How many? Off the
18 record.

19 (Whereupon, a discussion was had
20 off the record.)

21 JUDGE ROSAS: Respondent, cross?

22 MS. HILL: Thank you, sir.

23 CROSS EXAMINATION

24 BY MS. HILL:

25 Q. Sir, when did you start taking

1 photographs of vehicles entering and leaving the
2 Sunbelt facility at Franksville?

3 A. It would have been mid August of this
4 year.

5 Q. Of 2019?

6 A. Yes, ma'am.

7 Q. So but you had taken pictures of the
8 facility and vehicles entering and leaving the
9 facility prior to that, correct?

10 A. I don't believe so, no.

11 MS. HILL: Okay. Does he have a copy
12 of this?

13 MR. WIESE: No.

14 MS. HILL: May I approach, your Honor?
15 Do you want a copy of this, too, your Honor?

16 BY MS. HILL:

17 Q. All right. Would you please review it
18 starts Line 13, Paragraph 4 and continues to
19 Page 2 all the way down to Line 27.

20 A. Okay.

21 Q. All right. Does that refresh your
22 recollection as to when you started taking
23 photographs of vehicles entering or leaving the
24 Franksville profit center location?

25 A. I did not take a picture of that

1 leaving the Franksville facility. I took a
2 picture using my cell phone. It doesn't say I
3 have taken a picture of it leaving or entering
4 the facility in Franksville. I was taking
5 pictures of it on job sites.

6 Q. Let's see. The first line Line 13 at
7 about 12:04 a.m. on April 2, 2019 a third-party
8 truck left the Sunbelt facility --

9 MR. WIESE: Objection, your Honor. The
10 time in the affidavit is 10:04 a.m.

11 MS. HILL: Excuse me. 10:04 a.m., a
12 third-party truck left the Sunbelt facility.

13 BY MS. HILL:

14 Q. Are you referring to the Franksville
15 Sunbelt facility?

16 A. Yes, I am.

17 Q. I followed that truck in my vehicle.
18 Is that a correct statement, sir?

19 A. Yes, ma'am.

20 Q. The truck was a flatbed, a blue flatbed
21 truck, with and then your insert is a Sunbelt
22 aerial lift on it. Is that a correct statement,
23 sir?

24 A. Yes, ma'am.

25 Q. I took a picture of the truck using my

1 cell phone.

2 A. Yes, I did.

3 Q. Now, the truck, this third-party truck
4 was leaving the Sunbelt facility, correct, in
5 Franksville?

6 A. Yes, I did.

7 Q. And you took a picture of it, correct?

8 A. Yes, I did. I didn't take a picture of
9 it leaving the facility.

10 Q. But --

11 A. I took a picture of it at some point,
12 yes, I did.

13 Q. And at what point, sir?

14 A. When it got to a job site that I could
15 then relay the information to my organizing
16 staff that we could then go banner the facility.

17 Q. Okay. But, sir, based on your
18 statement here, it appears that you took a
19 picture of it before the first stop --

20 MR. RYAN: Object.

21 JUDGE ROSAS: Hold on. Finish your
22 question.

23 BY MS. HILL:

24 Q. Contrary to what you just said, you
25 took the picture prior to the first stop the

1 truck made at a FedEx location, correct?

2 JUDGE ROSAS: You object to that?

3 MR. RYAN: I object to the relevance of
4 this line of questioning, your Honor. I mean,
5 this is an event that occurred in April and
6 Mr. Marsolek testified about photographs --

7 JUDGE ROSAS: April of --

8 MR. RYAN: 2019.

9 JUDGE ROSAS: 2019.

10 MR. RYAN: But Mr. Marsolek's testimony
11 here today was about photographs he took after
12 Sunbelt announced the reorganization in August
13 of 2019 so we are three or four months prior to
14 that with this incident. I don't see the
15 relevance at all here.

16 JUDGE ROSAS: Okay. His testimony was
17 that he started taking pictures in mid August
18 of 2019.

19 MS. HILL: Correct and I am
20 concentrating on this one, your Honor, because
21 of your comments.

22 JUDGE ROSAS: Yep. Yep. And so what
23 you are focusing on here is what's the context
24 of the pictures that he was taking in mid
25 August 2019. Now, go ahead.

1 BY MS. HILL:

2 Q. But you were actually taking -- you
3 took at least one photograph prior to mid August
4 of a vehicle leaving the Sunbelt facility,
5 correct?

6 A. I clearly remember leaving the Sunbelt
7 facility following that truck. When that truck
8 got to a stop, I would photograph it wherever it
9 was and then I would relay that information to
10 the organizing staff.

11 Q. Sir, I am not talking about trucks. I
12 am referring to this particular incident.

13 A. If you read on Line 13 it says I
14 followed the truck in my vehicle, meaning we
15 were leaving and we proceeded to down the road.
16 Once we proceeded down the road and it got to
17 its first stop is when I would photograph it and
18 document where it was and send it to my
19 organizing staff.

20 Q. But you said would take a photograph of
21 it at the first stop.

22 A. Would and did.

23 Q. But, sir, it's you talk about the
24 picture prior to the first stop.

25 A. Yes, ma'am.

1 MR. WIESE: Objection. Your Honor,
2 this is improper impeachment. The affidavit is
3 not clear as to when or where.

4 JUDGE ROSAS: Hold on. No. No. No.
5 Don't. Let me be clear about because I don't
6 have that before me.

7 MS. HILL: Do you want it back?

8 JUDGE ROSAS: No. No. No. That's for
9 you all to obviously make clear as to what he
10 previously swore to and what he's testified to
11 today. Now, if there is some inconsistency,
12 someone needs to educate me about that. You
13 know, you all are objecting to the relevance and
14 I am trying to understand first what counsel is
15 asking the witness.

16 The testimony was, and maybe I needed
17 to have taken more detail, but the testimony was
18 that he started taking pictures in mid
19 August 2019. Now what is your understanding as
20 to what he testified to?

21 MS. HILL: That was mid August 2019
22 that he started taking photographs of vehicles
23 entering and leaving the facility.

24 JUDGE ROSAS: Okay. Now you need to
25 pose a question that you believe relates to

1 inconsistent prior testimony, okay? Go ahead.

2 Confront him with that.

3 BY MS. HILL:

4 Q. Okay. And based on this affidavit in
5 Paragraph 4, sir, you actually took photographs
6 of vehicles leaving the facility prior to August
7 of 2019, correct?

8 A. I couldn't tell you if I took pictures
9 of vehicles leaving the facility at that time.
10 I do not remember if I did. I do remember
11 taking pictures -- actually, I did not take a
12 picture of the vehicle leaving the facility. I
13 took a picture of it when it got to the job
14 site.

15 Q. What you are saying, sir, is
16 Paragraph 4 is incorrectly drafted?

17 A. No, ma'am. I did take a picture using
18 my cell phone.

19 MR. RYAN: I think this is
20 mischaracterizing what's in this affidavit.

21 JUDGE ROSAS: No. No. No. You can
22 characterize it properly from my understanding
23 on your questioning but I'm not exactly sure
24 what's going on here but that's for you guys to
25 clarify if you feel that it's not being

1 correctly interpreted here. Okay.

2 BY MS. HILL:

3 Q. All right. In your testimony on direct
4 examination, sir, and you can put down the
5 affidavit, sir. Just put it down for the
6 moment, sir. Thank you. You indicated that
7 bargaining unit members were terminated in
8 August of 2019; however, they were -- there were
9 two bargaining unit members who were laid off in
10 20 -- in August of 2019, correct?

11 A. Yes.

12 Q. Those -- there were only two bargaining
13 unit members at the Franksville profit center in
14 August of 2019, correct?

15 A. Yes, ma'am.

16 Q. And both of those individuals were
17 mechanics, correct?

18 A. Yes, they were.

19 Q. One was a road mechanic and one was a
20 shop mechanic, correct?

21 A. Yes.

22 Q. In August prior to those two
23 individuals being laid off, there were no
24 drivers in the bargaining unit working at Profit
25 Center 776, Franksville, Wisconsin, correct?

1 A. Correct.

2 Q. The last two drivers had been
3 terminated earlier in the year because of
4 several serious safety violations, correct?

5 A. That was the writeup, correct. Yes.

6 Q. With respect to the two individuals --
7 the two mechanics who were laid off in August
8 of 2019 by Sunbelt, they were eligible for
9 rehire, correct?

10 A. I'm sorry. Could you say that again,
11 please?

12 Q. The two individuals who were laid off
13 in August of 2019, the mechanics were eligible
14 for rehire, correct?

15 A. I don't believe they were, no. I don't
16 know that for sure.

17 Q. Okay. The first five pictures that you
18 have in Exhibit 25, sir, how much time did you
19 spend observing the Franksville profit center?

20 A. For the first five pictures?

21 Q. Yes, sir.

22 A. I don't have that documented of how
23 long I was there. My time varied. Some days it
24 could be as short as 20 minutes and as long as a
25 couple hours. But I never -- I didn't document

1 the time of how long I was there and what I did
2 and what they did.

3 It was more just I am taking care of
4 some of my business, my day-to-day business in
5 front of this facility and I am documenting what
6 I am seeing through photographs.

7 Q. And the remaining approximately, yeah,
8 I think you said you had a thousand photographs
9 of the Franksville facility?

10 A. Roughly, yeah. I have quite a few.

11 Q. And all of those photographs were taken
12 from August to the present I believe you
13 testified to, correct?

14 A. Yes, ma'am.

15 Q. But the photographs, by the way, you
16 indicated in your affidavit that you used your
17 cell phone. Did you use your cell phone for all
18 of these photographs?

19 A. No, ma'am.

20 Q. What type of camera did you use then
21 sir?

22 A. It was a digital camera. My own
23 personal digital camera.

24 Q. What type of lens?

25 A. I don't know. It's a Cannon.

1 THE REPORTER: I'm sorry, your Honor.
2 I didn't get the ending.

3 JUDGE ROSAS: Can you repeat that?

4 THE WITNESS: I am not a photographer.
5 I don't know much about cameras.

6 BY MS. HILL:

7 Q. And you don't know what this individual
8 in the high viz shirt and vest was doing with
9 this piece of equipment, correct?

10 A. He was doing preventive maintenance.
11 He is carrying a grease gun in his hand. There
12 is no reason you'd carry a grease gun and if you
13 actually look at photo No. 3, you can clearly
14 see he is greasing a pin or bushing in that
15 photo.

16 Q. You can see the pin or the bushing from
17 this photo?

18 A. With my experience in construction, I'd
19 grease machines on a daily basis, I can tell you
20 there is a pin and a bushing right there and
21 that's what he is doing with that grease gun.

22 Q. But you didn't talk to this individual,
23 did you?

24 A. No, ma'am.

25 Q. Do you know what happened with this

1 piece of equipment after this?

2 A. No, ma'am. I do not.

3 Q. Did you ask anyone at Sunbelt what went
4 on with this piece of equipment after you took
5 the photograph?

6 A. No, ma'am. I did not.

7 Q. Did Sunbelt indicate during the -- Were
8 you present for the negotiations regarding the
9 severance for the two mechanics?

10 A. Yes, I was.

11 Q. Was there any discussion about Sunbelt
12 was prevented from performing what you have
13 referred to as PM or preventive maintenance on
14 equipment?

15 A. In that meeting it was -- I am not sure
16 if that was the meeting or the meeting after it
17 was talked about the reorganization of that shop
18 and we no longer needed to have mechanics on
19 site or drivers, so...

20 Q. Did that location have any yard
21 associates?

22 A. I don't know for sure. It may have. I
23 don't know. I am not sure.

24 Q. Okay. Looking at --

25 A. I believe one of our guys was a yard

1 associate, but I don't know that for sure. If I
2 could review some documents, I could tell you
3 for sure.

4 JUDGE ROSAS: There is no question. No
5 question.

6 MS. HILL: No question pending.

7 BY MS. HILL:

8 Q. And you stated that Page 5 was you took
9 the picture because is this was a small drop-off
10 or pick-up. You weren't sure which, correct?

11 A. I believe I stated that this is just a
12 Sunbelt lowboy coming into the facility after
13 the date of the reorganization.

14 Q. And this was how many days after the
15 reorganization?

16 A. I believe the reorganization was
17 sometime in early August and this is late
18 August.

19 Q. Did the union negotiate how quickly it
20 would take for Sunbelt to move certain pieces of
21 equipment out of the Franksville location to
22 other profit centers in Wisconsin?

23 A. It did not, ma'am. No.

24 Q. Do you know why it did not negotiate
25 that?

1 A. I don't know.

2 Q. Did you follow this particular vehicle
3 in Photograph 5 to see where it went?

4 A. I do not believe I did. I couldn't
5 tell you for sure.

6 Q. Do you know if this piece of equipment
7 had been dropped off by a customer at the
8 Franksville location?

9 A. We are still talking about Picture 5?

10 Q. Picture 5, sir. Yes, sir.

11 A. I don't even see a piece of equipment
12 in Picture 5.

13 Q. So this is just a flatbed truck that
14 was leaving the profit center?

15 A. Yes, ma'am.

16 Q. And it shouldn't -- you are saying that
17 even an empty flatbed truck should not be
18 leaving the profit center?

19 A. I did not say that, no.

20 Q. Well, what's wrong with what's
21 happening in this picture?

22 A. It's just a picture of a Sunbelt lowboy
23 at a Sunbelt shop after the reorganization.
24 That's all it is.

25 Q. Okay. Am I looking at the same one you

1 are, 5?

2 A. Page 5? Is that what you got?

3 Q. Okay. All right. And so you are
4 saying that this vehicle should not have been
5 leaving this facility?

6 A. I never said that.

7 Q. Okay. Well, what's the significance of
8 it?

9 A. It's a lowboy at the Sunbelt shop after
10 the reorganization. That's all it is. Just
11 taking a picture. I never said -- I don't
12 believe I ever said it was wrong that it was
13 there.

14 Q. And why did you take the picture of it?

15 A. I just took a picture of it. I wanted
16 to document it was there.

17 Q. So you don't think there is any issue
18 with having this lowboy at this facility?

19 A. According to Jason Mayfield, the shop
20 was being reorganized. It would no longer need
21 drivers or mechanic. This is a driver for
22 Sunbelt driving a Sunbelt vehicle at the Sunbelt
23 shop that he no longer needs drivers or
24 mechanics at. That's what I was documenting.

25 Q. But you don't know what this particular

1 driver was doing at this Franksville location,
2 correct?

3 A. No, ma'am. I never had any contact
4 with the driver.

5 Q. Page 6.

6 A. Yes, ma'am.

7 Q. You said that this is a photo of a road
8 tech's truck and you spoke to a member a
9 bargaining unit member regarding this photo; is
10 that correct?

11 A. No, ma'am. I said that this is a road
12 tech's truck at the Sunbelt facility at
13 Franksville and if it's not the same, it's very
14 similar to the vehicle that the road tech had
15 when he was a bargaining unit member that worked
16 at that facility; and I spoke with him while he
17 was driving this vehicle prior to being laid off
18 at Sunbelt.

19 Q. Okay. So did you verify the number on
20 the door as being the vehicle that he used?

21 A. I believe I specified in my description
22 of this picture that I wasn't sure if it was
23 exactly this truck but it was a truck very
24 similar.

25 Q. So just because there is a service

1 truck at this facility that may or may not have
2 been assigned to the profit center, you took a
3 picture of it but you don't know the
4 significance of it?

5 A. I do know the significance that this
6 picture was taken after the reorganization
7 stated by Jason Mayfield. It's the same
8 vehicle, maybe not the same number but the same
9 vehicle that one of the bargaining unit members
10 operated when he worked there.

11 Q. I apologize. I am confused by what you
12 just said. You are not sure if this is the
13 exact same truck that the bargaining unit member
14 had at this profit center, correct?

15 A. Can I clarify?

16 JUDGE ROSAS: Just answer if you can
17 yes, no or I can't answer that.

18 THE WITNESS: Can you repeat the
19 question?

20 MS. HILL: All right. Court reporter,
21 please.

22 (Whereupon, the record was read
23 as requested.)

24 THE WITNESS: The vehicle is equipped
25 the exact same way that Kyle or one of the

1 bargaining unit members had when he worked
2 there. I cannot tell you for sure if the number
3 on the side is the exact same, but it is the
4 exact same setup and same color and same
5 everything in the vehicle that the bargaining
6 unit member once operated when he worked there.

7 BY MS. HILL:

8 Q. Do you know that this particular
9 service truck was assigned to the Franksville
10 profit center?

11 A. That, I could not tell you, no.

12 Q. Did you follow this vehicle entering
13 the profit center?

14 A. I did not.

15 Q. Did you follow this vehicle when it
16 exited the facility?

17 A. I do not believe I did, no.

18 Q. Okay. Page -- you testified regarding
19 Pages 7 through 9 as a group. This was a -- now
20 this particular lowboy was loaded with
21 equipment, correct?

22 A. You said 7 through 9?

23 Q. Yes, sir.

24 A. Yes, ma'am.

25 Q. And did -- And you did not know this

1 particular individual, correct?

2 A. Correct.

3 Q. Did you -- And you didn't follow this
4 particular individual, correct?

5 A. I did not, no.

6 Q. So you don't know if this particular
7 driver and Sunbelt vehicle was delivering it to
8 a job site or to another profit center, correct?

9 A. This particular load, I do not know.

10 Q. Do you know if equipment on this
11 particular truck, this lowboy, had been dropped
12 off at the Franksville facility by a customer?

13 A. I don't know, ma'am.

14 Q. Do you know if Sunbelt customers hire
15 outside haulers to pick up or to return pieces
16 of equipment that they are renting?

17 A. Are we referring to a picture or just a
18 question?

19 Q. Just a question, sir.

20 A. I do not know.

21 Q. Page 10, you testified this was a
22 third-party truck and third-party driver,
23 correct?

24 A. Yes, ma'am.

25 Q. Sunbelt used third-party trucks and

1 drivers prior to the reorganization, correct?

2 A. That's what I understand, correct.

3 Yes.

4 Q. And during negotiations, the union
5 never objected to Sunbelt using outside haulers
6 for its equipment, correct?

7 A. I don't believe we did, no.

8 MS. HILL: And, your Honor, I want to
9 stop at this point. I just glanced at the
10 clock. I know you had a cut off.

11 JUDGE ROSAS: No. I'd like you to
12 finish and get through this unless --

13 MR. WIESE: I mean, I have a lot of
14 work to do tonight with subpoenaed documents
15 but --

16 JUDGE ROSAS: Off the record.

17 (Whereupon, a discussion was had
18 off the record.)

19 JUDGE ROSAS: All right. Back on the
20 record. All right. At this point we are going
21 to adjourn until tomorrow at 8:15. Sir, do not
22 discuss your testimony with anyone, okay? I'll
23 remind you you are under oath, all right?

24 THE WITNESS: Yes, sir.

25 JUDGE ROSAS: Thank you.

(Proceedings adjourned at 5:45 p.m.)

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1 CERTIFICATE

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5 This is to certify that the attached
6 proceedings before the National Labor Relations
7 Board (NLRB), Region 18 - Subregion 30, in the
8 matter of SUNBELT RENTALS, INC., Case Nos.
9 18-CA-236643 and 18-CA-238989, in Milwaukee,
10 Wisconsin, on December 17, 2019, was held
11 according to the record, and that this is the
12 original, complete, and true and accurate
13 transcript that has been compared to the
14 recording, at the hearing, that the exhibits are
15 complete and no exhibits received in evidence or
16 in the rejected exhibit files are missing.

17 

18 PAULA ERICKSON, CSR, RPR

19 License No. 084-003899
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**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**Case No.: 18-CA-236643
18-CA-238989
18-CA-247528**

SUNBELT RENTALS, INC.

Respondent

And

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 139,
AFL-CIO**

Charging Party

**Place: Milwaukee, WI
Date: 12/18/19
Pages: 569-854
Volume: 3**

OFFICIAL REPORTERS

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18 - SUBREGION 30

In the Matter of:)
SUNBELT RENTALS, INC.,)
Respondent,)
and)
INTERNATIONAL UNION OF) Cases 18-CA-236643
OPERATING ENGINEERS LOCAL 139) 18-CA-238989
AFL-CIO,) 18-CA-247528
Charging Party.)

The above-entitled matter came on for
hearing pursuant to notice, before
ADMINISTRATIVE LAW JUDGE MICHAEL ROSAS, at
310 West Wisconsin Avenue, Suite 450W,
Milwaukee, Wisconsin, on Wednesday, December 18,
2019, at 8:15 a.m.

A P P E A R A N C E S

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* * * *

I N D E X

VOIR

WITNESS

DX CX RDX RCX DIRE

Daniel Marsolek

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Jason Mayfield

624 692 695

695

Robert Bogardus, III

698 727 731

729

Rebel Strohmeier

733 753

Jamie Smith

756 764

Ramon Gutierrez

769 781 794

792

Katherine Torgerson

797 809 814 817

816

Kyle McKellips

819 838 850

851

E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

GCX 26	720	721
GCX 27	656	660
GCX 28	660	661
GCX 29	665	666
GCX 30	668	668
GCX 31	635	635
GCX 32	636	638
GCX 33	742	745
GCX 40	722	723
GCX 46	747	747
GCX 47	685	
GCX 53	726	726
GCX 55	686	687
GCX 56	687	689
GCX 57	748	749
GCX 58	689	691
GCX 59	683	684

P R O C E E D I N G S

(Time Noted: 8:15 a.m.)

JUDGE ROSAS: On the record. Counsel?

MS. HILL: Thank you.

CROSS EXAMINATION (resumed)

BY MS. HILL:

Q. Mr. Marsolek, would you, please, look at Page 11 of 45 of Exhibit 25, sir. Okay. For this particular photo --

MR. WIESE: One moment, please.

MS. HILL: Oh, I'm sorry.

MR. WIESE: That's okay. Okay. I'm ready.

MS. HILL: And, your Honor, you are ready?

BY MS. HILL:

Q. All right. Page 11, sir.

A. Yeah.

Q. Now for this particular photo, you do not see any Sunbelt employees here, correct?

A. No, ma'am. That's incorrect. I believe there is a Sunbelt employee on the far left side of the page right near the -- what appears to be an aerial lift and right behind the aerial lift, there looks to be someone

1 standing there in the green shirt.

2 Q. The has mat -- excuse me -- high vis
3 shirt?

4 JUDGE ROSAS: Can you point to where,
5 please?

6 THE WITNESS: It's on the left side of
7 this picture right behind this lift, you can see
8 the high vis shirt there.

9 BY MS. HILL:

10 Q. Do you know who that individual is?

11 A. No, ma'am.

12 Q. Do you know what work is being done?

13 A. No, ma'am.

14 Q. Do you know how this equipment got to
15 these bays?

16 A. No, ma'am.

17 Q. If I use the expression work bays for
18 these two locations, these two doors that are
19 open, you understand what I am talking about?

20 A. Yes.

21 Q. Of all the photographs you took, and
22 granted we only have here 45 of you said
23 approximately a thousand pictures you took,
24 correct?

25 A. Yes.

1 Q. Did you take any pictures of the front
2 door or doors of the profit center?

3 A. I would have to review the pictures but
4 there may be some, yes.

5 MS. HILL: Okay. If we could receive
6 those, sir, Mr. Ryan, at some point have them
7 produced based on the subpoena that we had
8 issued. I think it's broad enough that might
9 cover it but we can discuss that.

10 MR. RYAN: I don't believe it is but we
11 can discuss that off the record.

12 BY MS. HILL:

13 Q. All right. Did you get any photographs
14 of customers walking into the front section of
15 the profit center?

16 A. I wouldn't know if they were customers
17 or employees, no.

18 Q. All right. Now, when I say the front
19 part of the profit center, do you know what I am
20 referring to?

21 A. Yes, ma'am.

22 Q. Okay. And do you have R1 in front of
23 you, too. It's the drawing that Mr. Ervin
24 created.

25 A. There is a lot of paperwork.

1 Q. So do you have any photographs and if I
2 may approach the witness, your Honor. Okay. Do
3 you have any photographs of this entrance area?

4 A. In these pictures or all the
5 photographs?

6 Q. In all of the photographs.

7 A. Yes. I am quite sure I do.

8 Q. Do you have any photographs of the
9 parking lot?

10 A. Yes, ma'am.

11 Q. Now the parking lot is sort of a
12 wraparound, correct?

13 A. Yes.

14 Q. It would wrap around from approximately
15 where the R is on this exhibit, correct, to
16 approximately the corner of this conference
17 room, correct, permissible parking.

18 Now let the record reflect that the
19 witness is looking at 16. It's that aerial
20 photograph the Google one, Mr. Wiese?

21 A. Yes. You are correct.

22 Q. Okay. Now this -- granted this aerial
23 is not accurate, correct, for today's profit
24 center?

25 A. Things have changed from that picture,

1 yes.

2 Q. Okay.

3 MR. WIESE: Your Honor, I am going to
4 object at this point. I don't think it's
5 appropriate for counsel to be standing over the
6 witness while questioning.

7 MS. HILL: I was just trying to point
8 to it.

9 JUDGE ROSAS: Well, you know what,
10 Counsel, Counsel, refer to your R1 so everybody
11 can see. He can see what you are referring to.
12 I think it's a large enough diagram that
13 everybody can see what we are talking about.

14 BY MS. HILL:

15 Q. Correct and it's --

16 JUDGE ROSAS: Do you have it?

17 MS. HILL: Yes, I do.

18 JUDGE ROSAS: All right. So when you
19 refer to it, refer to yours.

20 MS. HILL: Right.

21 JUDGE ROSAS: Okay.

22 BY MS. HILL:

23 Q. So with respect to the front part of
24 the profit center, would you say that that is --
25 the inside part, that is where there is a rental

1 counter?

2 A. There is a rental counter inside, yes.

3 Q. Did you take any pictures from the
4 outside of the profit center so you could get
5 pictures of the counter?

6 A. No. No, I did not. It would be very
7 difficult to see inside through the windows with
8 the camera. It's not like I could take pictures
9 of the counter.

10 Q. Why not, sir?

11 A. It's very -- it's pretty dark.

12 Q. Did you try?

13 A. No, I did not. I am just speaking in
14 general terms.

15 Q. Did you take any photographs of the
16 parked vehicles in the wraparound parking lot
17 for customers?

18 A. I believe there would be some
19 photographs, yes. It's not -- Go ahead. I'm
20 sorry.

21 Q. I'm sorry for interrupting. Go ahead.

22 A. The photos I was taking were very
23 generalized of the facility so there is various
24 pictures of what could be customers' cars or
25 employees' cars, could be customers walking in

1 and out. I wouldn't know if they are customers
2 or employees.

3 Q. Did you take any photographs of license
4 plates of vehicles?

5 A. Yes.

6 Q. Okay. And any of the pictures in this
7 Exhibit No. 25, any of these photographs of
8 license plates?

9 A. I would have to look at all the
10 pictures. I don't know if there is license
11 plates in there or not. Actually, in this
12 picture right here No. 11 --

13 Q. Yes, sir.

14 A. On the bottom corner of the right side
15 of the page appears to be a front end of a car
16 and that is a license plate.

17 Q. A legible license plate perhaps I
18 should say that.

19 A. Right here there is not, no.

20 Q. And did you in your efforts to take
21 pictures of the vehicles entering, leaving and
22 located at the Sunbelt facility, did you take
23 photographs of any of the license plates so that
24 they would be legible?

25 A. Not intentionally. If they were

1 legible they were in the picture legible. Most
2 of my pictures were pictures of vehicles so
3 there is going to be license plates in the
4 pictures. Legible or not it depends on the
5 focus and things of that nature. I didn't
6 intentionally go out to take pictures of the
7 license plates.

8 Q. For -- If you would turn to Page 12,
9 the questioning for this picture was combined
10 with Page 13 so my questions will be regarding
11 both of them also.

12 A. Yes, ma'am.

13 Q. These two photographs, they are of the
14 same vehicle pulling the same piece of
15 equipment?

16 A. Yes, it appears.

17 Q. Did you follow this vehicle?

18 A. I did not, no.

19 Q. And why not?

20 A. I didn't feel it necessary to do so at
21 the time. I was preoccupied with looking at the
22 facility and doing some other things, notes.

23 Q. So you don't know where this vehicle
24 ultimately ended up?

25 A. No, ma'am.

1 Q. Did you direct anyone else from the
2 union to follow this particular vehicle?

3 A. No.

4 Q. So for did you check any type of
5 documents to determine whether this particular
6 vehicle that was towing a piece of Sunbelt
7 equipment if it ended up at a customer location?

8 A. No, ma'am.

9 Q. Do you know how this piece of equipment
10 ended up at the Franksville profit center?

11 A. On the back of this truck but other
12 than that, no.

13 Q. Oh, so you are saying -- I apologize.
14 I didn't realize from your testimony that this
15 piece of equipment was delivered by the same
16 vehicle to the Franksville location and then was
17 taken away by the same vehicle. Is that what
18 you are saying?

19 A. If you look at the time stamp, this is
20 the same vehicle, the same day and the same time
21 it entered the property at 10:53 and left at
22 11:31.

23 Q. So Page 12 was it entering the profit
24 center?

25 A. Yes, ma'am.

1 Q. And 11:31 was it leaving the profit
2 center?

3 A. Yes.

4 Q. You mentioned a couple times in your
5 testimony the name Ahern. This particular
6 photograph does it show an Ahern sign?

7 A. Yes, ma'am.

8 Q. And it is located right across the
9 street from Sunbelt, correct?

10 A. Yes.

11 Q. And the 139?

12 MR. WIESE: Objection. Your Honor, I
13 don't know if it's an objection but can we
14 clarify which picture we are talking about here,
15 which number?

16 MS. HILL: Well, if you'd look at No.
17 12 and if you'd look at No. 13.

18 MR. WIESE: Okay.

19 BY MS. HILL:

20 Q. Would you agree the Ahern sign is in
21 both of the photographs that we're discussing
22 right now?

23 A. Yes.

24 Q. Okay. And Ahern is not represented by
25 the 139 as of today?

1 A. Yes, ma'am. They are not represented.

2 Q. Did you take pictures of any of Ahern's
3 vehicles coming and going?

4 A. In some of my photos there may be Ahern
5 vehicles in that because of the location is so
6 close to the Sunbelt profit.

7 Q. And did you take photographs and follow
8 Ahern vehicles to see where their equipment was
9 going?

10 MR. WIESE: Objection, your Honor.
11 Relevance.

12 JUDGE ROSAS: What's the relevance,
13 Counsel?

14 MS. HILL: To see if any of the
15 equipment that was going from Ahern was going to
16 the same location that Sunbelt equipment was
17 going to or that the equipment coming back to
18 Sunbelt was then being replaced by the Ahern
19 equipment.

20 JUDGE ROSAS: Sustained as to Ahern
21 vehicles.

22 BY MS. HILL:

23 Q. Then looking at Pages 14 and 15. Both
24 of these pictures you were questioned about it
25 together so I will do the same. Are you at 14

1 and 15, sir?

2 A. Yes, ma'am.

3 Q. The piece of equipment at 14, do you
4 know how this wood chipper got here?

5 A. I do not know. I do not see it placed
6 there.

7 Q. Do you know what happened to this piece
8 of equipment after you took this photograph?

9 A. I do not know.

10 Q. Now you mentioned that there was a rag
11 and a tool underneath this wood chipper,
12 correct?

13 A. Yes.

14 Q. Did you -- did you see anyone working
15 on this piece of equipment?

16 A. I do not recall if I saw them working
17 on it that day.

18 Q. Okay.

19 A. I do know that I can see the rag,
20 though. That would indicate that there was work
21 being done.

22 Q. I believe you thought you said that the
23 red colored object sort of to the left on the
24 ground which is what you deemed to be a rag,
25 correct?

1 A. Correct. A shop rag or something of
2 the sorts.

3 Q. And do you have independent knowledge
4 of seeing anyone from Sunbelt working on this
5 piece of equipment?

6 A. I don't recall.

7 Q. And you don't know if someone was just
8 cleaning off some of the wood chips or the dust
9 from this piece of equipment, correct?

10 A. Yeah. I don't know for sure, no.

11 Q. Looking at 15, sir. You testified that
12 in 15 that this white vehicle was towing a piece
13 of equipment away from Sunbelt, correct?

14 A. Yes.

15 Q. But you don't know if it was being
16 driven by a Sunbelt employee, correct?

17 A. I do not know.

18 Q. And you don't have a picture -- a
19 legible picture of the driver's -- the license
20 plate on this vehicle, correct?

21 A. Not in this stack of photos, no.

22 Q. Oh, do you have a photograph of this
23 particular license plate in with the other
24 photos?

25 A. There is quite a few photos that in

1 that group of photos there may be a license
2 plate in there, yes.

3 Q. Okay. Do you know what -- this is a
4 Ford vehicle, the white vehicle. Do you know
5 what size it is? F250?

6 A. I believe it's an F150.

7 Q. F150. So F150 could pull this piece of
8 equipment on a trailer, correct?

9 A. I would assume so, yes.

10 Q. And do you know if the outside sales
11 representatives or the profit center manager at
12 Franksville prior to the reorganization had ever
13 used their personal vehicles or a Sunbelt pickup
14 truck to haul any small pieces of equipment to
15 customers or for their own personal use?

16 MR. WIESE: Objection. Form.

17 JUDGE ROSAS: Do you understand that
18 question? Can you answer it?

19 THE WITNESS: I believe so, yeah.

20 JUDGE ROSAS: Okay.

21 THE WITNESS: Yes. I do know that they
22 did haul these vehicles -- haul this equipment
23 with their company or personal vehicle for
24 customers or personal use.

25

1 BY MS. HILL:

2 Q. And Sunbelt employees are permitted to
3 rent equipment from Sunbelt, correct?

4 A. I'm not sure if that's one of your
5 policies or not. I don't know.

6 Q. Do you recall that being discussed
7 during negotiations?

8 A. Vaguely, yes. I remember there was
9 talk.

10 Q. And was there a discussion that
11 bargaining unit members could rent equipment
12 from Sunbelt at a discount?

13 A. I believe so, yes.

14 Q. And, sir, I'm sorry. One more question
15 about 15 and you don't know what this piece of
16 Sunbelt equipment is used for; is that correct?

17 A. I don't have intimate knowledge of this
18 piece of equipment. I believe it's some type of
19 industrial floor cleaning device. Something
20 that's used inside of a large warehouse or
21 something.

22 Q. But that's just a guess?

23 A. Yes, ma'am. It's not -- I don't have
24 much knowledge of that piece, no.

25 Q. Did you post any of the 1,000 pictures

1 on social media?

2 A. No, ma'am.

3 Q. Did you ask anyone from the 139 to post
4 any of the 1,000 pictures on social media?

5 A. No, ma'am.

6 Q. Do you know if anyone from the 139
7 posted any of your 1,000 pictures on social
8 media?

9 A. There may be some of my photos that
10 were posted on the 139 Facebook page of
11 protected activities, yes.

12 Q. So the 1,000 photographs that you took,
13 included photographs of bannerings?

14 A. Yes.

15 Q. The 1,000 photographs included pictures
16 of the inflatables?

17 A. Yes.

18 Q. The only picketing that was done was in
19 the Chicago district. Do any of your 1,000
20 photographs include the picketing of the Chicago
21 area?

22 MR. RYAN: I think I want to object on
23 relevance at this point, your Honor.

24 JUDGE ROSAS: This sounds like a
25 deposition.

1 MS. HILL: Well, sir --

2 JUDGE ROSAS: Like a very comprehensive
3 opening deposition. Counsel, the photographs --
4 you have gotten information from this witness on
5 direct examination, the context of which was
6 photographs allegedly depicting the location,
7 equipment there at, equipment leaving, coming to
8 the location.

9 You have elicited some information
10 regarding additional pictures that the witness
11 has taken and what they might involve. There
12 was some discussion, I don't know if it was on
13 the record or off the record, about a subpoena
14 that you may have served, whether it encompasses
15 any of that stuff, that's not before me at this
16 time. You need to start bunkering down on the
17 photographs that are before us.

18 MS. HILL: Well, your Honor, in our
19 case in chief, we will be asking questions --
20 more questions about those photographs because
21 there is a state law regarding those type of
22 photographs.

23 JUDGE ROSAS: Okay. That's your case.
24 What I'd like to do is complete this witness'
25 testimony.

1 BY MS. HILL:

2 Q. On Page 16 through 20, you were asked
3 about these all at once, sir, all in a group.

4 A. Yes.

5 Q. All right. Page 16, you do not -- you
6 testified you do not know what this gentleman
7 was doing, correct?

8 A. No, ma'am.

9 Q. And you don't know for sure if he is a
10 Sunbelt employee, correct?

11 A. I know he is not a bargaining unit
12 member.

13 Q. Sir, I believe my question was you do
14 not know if this individual was a Sunbelt
15 employee, correct?

16 A. Well, if you look on the side of the
17 photograph you can see a Sunbelt shirt on him.

18 Q. I see a high vis shirt on him, sir.

19 A. In the center of his back you can see
20 the Sunbelt logo.

21 JUDGE ROSAS: Can you point to it?

22 THE WITNESS: Right in the center.

23 MS. HILL: I see the black spot.

24 THE WITNESS: Here's a black spot.

25 BY MS. HILL:

1 Q. You believe it to be the Sunbelt --

2 A. I know the Sunbelt logo when I see it,
3 so...

4 Q. But the high vis vest that Sunbelt has
5 that anyone can use if they are on the property
6 has the Sunbelt logo, correct?

7 A. Yes, ma'am.

8 Q. Do you know how this piece of equipment
9 arrived into this bay?

10 A. I don't have firsthand knowledge of how
11 it got there, no.

12 Q. Do you know where this piece of
13 equipment went after it was in this bay?

14 A. No, ma'am.

15 Q. Page 18. You did not -- do you know
16 how this piece of equipment, the blue genie,
17 arrived in this bay?

18 A. I do not know.

19 Q. And you don't know where this piece of
20 equipment went after it was in this bay,
21 correct?

22 A. No, ma'am.

23 Q. Now, this picture of a gentleman
24 standing to the left of the piece of equipment,
25 you don't have -- do you have a picture in this

1 group of him doing anything to this piece of
2 equipment?

3 A. No, ma'am.

4 Q. Did you personally observe him doing
5 anything to this piece of equipment?

6 A. I don't recall offhand if he did or
7 not.

8 Q. And do you recognize the gentleman in
9 the photograph?

10 A. No, ma'am.

11 Q. 19. This is a picture of both of the
12 bays you just saw. There appears to be a person
13 in the window of the door, correct?

14 A. Yes.

15 Q. Do you know if that's a Sunbelt
16 employee?

17 A. I believe that to be the same person
18 that's in picture 20 and in 16 as well.

19 Q. But sitting here today, do you remember
20 watching him go from the bay to the door or the
21 door to the bay?

22 A. Yes, ma'am.

23 Q. So you did see him move between the two
24 locations?

25 A. Yes.

1 Q. You didn't question him?

2 A. I was several hundred feet away from
3 him.

4 Q. Did you ever question -- speak to him?

5 A. No, ma'am.

6 Q. And for our photograph 20, what was he
7 doing to this piece of equipment?

8 A. At this point, the equipment went from
9 fully extended or at least extended in prior
10 pictures to down on the ground and for him to
11 reach in there and work on something.

12 Q. You are saying work on something. Did
13 you see him working on something?

14 A. Well, he has his hands on the piece of
15 equipment. He is clearly doing something to it.
16 Working -- what he is doing, I don't know.

17 Q. Thank you. That's what I wanted to
18 know, sir. And did you see him operate this
19 piece of equipment to lower it?

20 A. Yes.

21 Q. Do you know what happened to this piece
22 of equipment after it was in this bay?

23 A. I do not know, ma'am.

24 Q. You can put those four pages away, sir.
25 And now the next group is 21 to 22. You stated

1 that this was not a bargaining unit employee in
2 this vehicle, correct?

3 A. Yes, ma'am.

4 Q. Who is this person?

5 A. I don't know.

6 Q. And let's see. Was this person
7 entering or leaving the profit center?

8 A. This person would be leaving the profit
9 center.

10 Q. Was he hauling any equipment?

11 A. I do not recall to this day what he was
12 doing.

13 Q. What type of vehicle was he driving?

14 A. That would be a Sunbelt semi.

15 Q. And you don't know -- did you follow
16 this particular vehicle?

17 A. I did not.

18 Q. And why not?

19 A. At the time I must have felt it wasn't
20 necessary.

21 Q. Why wasn't it necessary?

22 A. My day-to-day business kept me down in
23 the area. I didn't need to.

24 Q. You can put those two away. The next
25 photograph you had a question about was 23. Now

1 you refer to the piece of equipment on the
2 that's being hauled by this pickup as a night
3 plant, correct?

4 A. I believe I called it a light plant.

5 Q. Light?

6 A. Yeah.

7 Q. Sorry. I couldn't hear you. Sunbelt
8 lists this piece of equipment as a light tower,
9 correct?

10 A. I don't know for sure what they
11 classify it as. In construction we call it a
12 light plant.

13 Q. Did you see this -- see where this
14 light tower came from?

15 A. From the Franksville yard. It was
16 taken out of the backyard and brought up front.

17 Q. Did you see where it went?

18 A. After it left my live view from where
19 he was sitting, no.

20 Q. You didn't follow it?

21 A. No, ma'am.

22 Q. Did you request any 139 employee to
23 follow it?

24 A. I don't have the authority to tell
25 people to do that, but no, I did not.

1 JUDGE ROSAS: Look, Counsel, I am going
2 to streamline here. I am going to marshal the
3 evidence to the extent that if you don't ask
4 him, I will as to his methodology with respect
5 to any of these photographs.

6 The sense I get is one where he just
7 took photographs. He may or may not have
8 followed so you can ask him that. Right now as
9 to whether he did with respect to any of the
10 vehicles, any of the individuals depicted, any
11 of the vehicles, whether he followed or talked
12 to anybody, all right. Because --

13 MS. HILL: I may or may not.

14 JUDGE ROSAS: It's just a repetitive
15 waste of time to ask it over and over again if
16 it's going to be if there is one answer every
17 time. Do you understand what I am saying? So
18 why don't you ask him a general question.

19 MS. HILL: Sir, I respectfully disagree
20 because you gave Mr. Wiese the opportunity to go
21 through these in some times in groups of two,
22 sometimes groups of four, sometimes a single
23 photograph and he was able to ask his questions.

24 JUDGE ROSAS: Okay. You are to ask him
25 that question generally. If not, I will sustain

1 the objection. I will give you one shot to ask
2 it in the entirety. If there is anything that
3 opens up with respect to any of them, I'll give
4 you some leeway but I'd like to streamline this.

5 MS. HILL: Okay. What objection was
6 raised by Mr. Wiese. I'm sorry. I missed it.

7 JUDGE ROSAS: No. Your -- it's my
8 objection.

9 MS. HILL: Oh, thank you, sir.

10 JUDGE ROSAS: My objection is that you
11 are asking the same question with respect to
12 every photograph. There are certain questions
13 that you are asking with respect to every
14 photograph following of, talking to are all the
15 same. I'd like to know if the answer is going
16 to be the same with respect to all of the
17 photographs so you can just ask the questions
18 you need to ask with respect to the photographs
19 that are of some relevance.

20 MS. HILL: I'm sorry, sir, which
21 photographs are of some relevance?

22 JUDGE ROSAS: 1 through 45.

23 MS. HILL: Okay. Oh so you are saying
24 anything of the remaining 955, I don't ask
25 questions about, correct?

1 JUDGE ROSAS: That's not before me.

2 MS. HILL: Okay.

3 JUDGE ROSAS: That's you all are going
4 to discuss that. Maybe that's another
5 controversy that I'll have to rule on but if and
6 when it does arise --

7 MS. HILL: What I am doing now is
8 appropriate about these?

9 JUDGE ROSAS: I'd like you to ask him
10 one question with respect to whether he spoke to
11 anyone in any of these photographs.

12 MS. HILL: Okay.

13 JUDGE ROSAS: And whether he followed
14 any of these vehicles that he took pictures of.
15 These are still pictures. I think it's a simple
16 question to just ask did you follow or talk to
17 anyone depicted in that picture.

18 MS. HILL: Pictures.

19 JUDGE ROSAS: Pictures. The remaining
20 pictures or if you want to go back to your
21 comprehensive.

22 MS. HILL: Okay but I may have
23 additional questions.

24 JUDGE ROSAS: Absolutely.

25 MS. HILL: All right, sir.

1 BY MS. HILL:

2 Q. Now, I want you to look at starting at
3 Page 23, sir, and look at 23 through 45 pursuant
4 to the judge's request, did you look to see --
5 did you speak to any of the individuals in the
6 photographs, where there are individuals, and I
7 think the parties will agree that some of the
8 photographs do not have individuals, so look at
9 those and then let me know did you speak to any
10 of the individuals in those photographs? We are
11 look only looking at 23 through 45.

12 A. Okay. Give me a moment, please. I
13 have a question actually about one. If I have
14 ever spoke to this person ever or the day of
15 this picture was taken?

16 Q. Well, your Honor, it's your objection
17 so...

18 JUDGE ROSAS: Go ahead. Ask him what
19 picture, sir, are you referring to?

20 MS. HILL: And you just look at the
21 page number.

22 THE WITNESS: I can tell you it would
23 be Page 31, a picture of the putters or the
24 third-party lease truck.

25

1 BY MS. HILL:

2 Q. Is there a person on this one?

3 A. Well, it's a truck so someone is
4 driving it.

5 Q. Well, I didn't see it moving. I
6 thought maybe it's parked.

7 A. No, ma'am. The vehicle is being driven
8 by a person.

9 Q. Okay.

10 A. I have spoke to there individual in the
11 past. Not this day in question but I have spoke
12 to him before.

13 Q. And who is this individual?

14 A. I don't know his name. I just ran into
15 him on a job site one day and we got to talking
16 a little bit.

17 Q. Okay. And what did you talk about?

18 A. I just was letting him know that we
19 have a labor dispute with Sunbelt Rentals and I
20 believe I gave him a handbill.

21 Q. Anything else?

22 A. That was it.

23 Q. Did you continue to follow him?

24 A. The day we spoke, no. It was by chance
25 that we ran into each other.

1 Q. Okay. Continue from 31 on to 45.

2 A. In picture 45 I have also spoke to this
3 individual in the third-party lease truck and
4 let him know that we did have a labor dispute
5 with Sunbelt Rentals in the past.

6 Q. You said third-party what?

7 A. Third-party truck that Sunbelt uses or
8 third-party leased truck.

9 Q. I'm sorry.

10 A. However it works. It's a non-Sunbelt
11 vehicle hauling Sunbelt equipment. I have spoke
12 to that individual as well in the past.

13 Q. And when?

14 A. This goes pretty far back. I couldn't
15 tell you the time or date.

16 Q. Was it during the negotiations with
17 Sunbelt?

18 A. Yes, ma'am.

19 Q. And did you provide him with a
20 handbill?

21 A. Yes, ma'am.

22 Q. Anything else?

23 A. That's it.

24 Q. Did you follow him?

25 A. When there was Sunbelt equipment on his

1 vehicle, yes, I did. Two job sites.

2 Q. And those job sites?

3 JUDGE ROSAS: You are referring to that
4 date that's depicted in that photograph?

5 THE WITNESS: Not this day, no.

6 BY MS. HILL:

7 Q. So the two job sites you referenced?

8 MR. WIESE: Objection. Relevance.

9 MS. HILL: He raised it.

10 JUDGE ROSAS: Sustained.

11 BY MS. HILL:

12 Q. Sir, with respect to Pages 23
13 through 45, did you follow, and granted I
14 believe your testimony is some of these pieces
15 of equipment were going into the lot, some were
16 going out of the Sunbelt lot?

17 A. Yes, ma'am.

18 Q. For 23 through 45, did you follow any
19 of these vehicles that were leaving the lot. If
20 so, please identify the photograph.

21 A. All the pictures in this group I
22 believe I did not follow any of these vehicles
23 the day the picture was taken.

24 Q. So you followed them later?

25 A. I have followed vehicles that have left

1 that lot.

2 Q. Okay. I mean, of the vehicles you took
3 a picture of, did you later follow them?

4 A. Yes, ma'am. Maybe not the day of but
5 there was times and dates where I did follow
6 them, yes.

7 Q. Okay. Now with respect to 23, you do
8 not know if this is a Sunbelt vehicle that is
9 hauling the light tower, correct?

10 A. I do know that vehicle is at the profit
11 center quite often. I don't know if it's a
12 Sunbelt vehicle but it's there very -- quite
13 often on a daily basis or every time I have been
14 there I have noticed it.

15 Q. But you weren't at the profit center on
16 a daily basis per your testimony, correct?

17 A. I misspoke with daily. But any time I
18 would be there I would happen to notice a lot of
19 the same vehicles in the parking lot of Sunbelt.

20 Q. But many of the Sunbelt employees have
21 the same type of vehicle, correct?

22 A. Similar, yes. They are half ton pickup
23 trucks that I have noticed, yes.

24 Q. And either Ford or Chevy, correct?

25 A. Not always.

1 Q. But they are white vehicles, correct?

2 A. Yes. They are white.

3 Q. And for Photograph 24 you used the term
4 "maybe" this is a mechanic, correct?

5 A. I don't know his official title, yes.

6 Q. And you are not sure if it's even a
7 Sunbelt employee, correct?

8 A. I am pretty positive it is but --

9 JUDGE ROSAS: Again, you are referring
10 to an individual in this photograph?

11 THE WITNESS: It's real dark inside the
12 shop.

13 MS. HILL: This is the one you asked
14 him about before, your Honor.

15 JUDGE ROSAS: Just, again, so he
16 is showing me.

17 THE WITNESS: In the center of the
18 photo you can see a set of gauges, maybe it
19 appears to be a hand, a shoulder. It's very
20 dark you can tell the hood on the machine is up
21 as if someone is working on it.

22 BY MS. HILL:

23 Q. And for Picture 25, you didn't follow
24 any of this equipment going into the Sunbelt
25 lot, correct?

1 A. No, ma'am.

2 Q. And you didn't follow any of the
3 equipment when it left the Sunbelt lot, correct?

4 A. Are we speaking of the day in question
5 of the photo?

6 Q. 25, day in question or later.

7 A. Yes. Later I did follow vehicles out
8 of that lot.

9 Q. I am not talking about -- If you look
10 at 25, I see equipment here, correct?

11 A. Yes.

12 Q. Did you see any of this equipment
13 getting hauled out?

14 A. There is a lot of equipment in that
15 photo. I couldn't tell you if I saw that
16 particular piece being hauled out. Did I see
17 equipment from Sunbelt be hauled out, yes. This
18 particular stuff, I don't know.

19 Q. So you don't know if a customer dropped
20 it off there or was going to pick it up there?

21 A. I don't. I believe we have a photo of
22 this tractor loader backhoe being hauled out in
23 one of these.

24 Q. Okay. Do you want to look for that,
25 sir?

1 A. Yes. I could be wrong. I apologize.

2 On Page 7, it's a smaller version of that piece.

3 Q. So it wasn't that piece of equipment?

4 A. No, ma'am. It was not.

5 Q. All right. You mentioned in your
6 direct examination a couple times that you saw
7 several pieces of orange Sunbelt equipment among
8 the green, and I didn't hear any -- your
9 explanation as to why you found that to be
10 significant to testify about it. Why is that
11 significant to you?

12 A. It's significant to me because the
13 whole time we have had negotiations and this
14 labor dispute that it's always been green and it
15 was more and more often we started to see some
16 of this stuff that was no longer green. It was
17 more natural factory colors with Sunbelt logos
18 on them.

19 Q. But it still has Sunbelt's logos on it,
20 correct?

21 A. Yes. It's just not as eye popping to.

22 Q. Did you ask anyone why it wasn't
23 painted green yet?

24 A. No.

25 MR. WIESE: Objection. Relevance.

1 MS. HILL: He brought it up on direct.

2 JUDGE ROSAS: All right. Do you want
3 to know? You want to probe the colors? Go
4 ahead.

5 MS. HILL: Yes. He said it was
6 significant.

7 JUDGE ROSAS: Go ahead.

8 THE WITNESS: I had a personal feeling
9 that these pieces of equipment were put on job
10 sites to still use Sunbelt equipment yet to
11 somewhat camouflage themselves to the rest of the
12 rental equipment on sites. This was a personal
13 feeling.

14 BY MS. HILL:

15 Q. But, again, I believe my question
16 before the objection and everything was did you
17 ask anyone at Sunbelt why the equipment was
18 still orange and not painted green yet?

19 A. I never spoke to anybody at Sunbelt,
20 no. I can even broaden that. As of --

21 JUDGE ROSAS: No question, sir. No
22 question.

23 BY MS. HILL:

24 Q. With respect to 26, your testimony was
25 it looks like he is greasing. Now do you base

1 that on this picture, sir, or something that you
2 witnessed before or after taking this photo?

3 A. I believe I mentioned greasing on
4 another photo he was working on he was doing
5 something with this piece of equipment whether
6 it was -- he has that stance of working on a
7 piece of equipment.

8 Q. Well, I apologize. My notes may be in
9 error but it states looks like he is greasing.

10 A. He has that position where he is
11 bending down to do some kind of work, whether
12 it's greasing or some type of preventive
13 maintenance, cleaning. I don't know. It's not
14 a normal posture to stand over something like
15 that.

16 Q. And 26, 27, 28 are the same gentleman,
17 correct?

18 A. Yes, ma'am.

19 Q. But you extended your lens to get a
20 more close-up photo, correct, by the time you
21 got to 28, correct?

22 A. Yes.

23 Q. Okay. Page 30, and excuse me, I should
24 say this is going to be Group 30 through 32.
25 That's how you were questioned. And, again, you

1 have no idea whether a Sunbelt customer had
2 retained the services of this outside hauler to
3 deliver this equipment, correct?

4 A. No, ma'am.

5 Q. Okay. For photo 33, I said that there
6 are two Sunbelt employees bringing equipment to
7 the shop. That's how you testified. Are you
8 referring to the equipment that they are
9 driving, they are putting it in one of the bays?

10 A. Yes, ma'am.

11 Q. Did you see any work being done on
12 those pieces of equipment?

13 A. No, ma'am.

14 Q. And, again, now, there is one person in
15 the front vehicle wearing the high vis vest but
16 the other individual is not so you don't know if
17 either of them are Sunbelt employees?

18 A. No, ma'am.

19 Q. And Photo 34, you simply stated that
20 this was a large piece of equipment that you did
21 not believe should have been at the Franksville
22 location but did you see what this individual
23 was doing with this piece of equipment?

24 A. Yes, ma'am, I did.

25 Q. And what did you see this individual

1 doing?

2 A. This individual put this piece of
3 equipment onto a lowboy and he left with it.

4 Q. Is that in another photograph?

5 A. 36.

6 Q. So this was the later reference when
7 you said 34 was on 36. Thank you. And 35 this
8 is where you again made a reference that you saw
9 a piece of orange equipment?

10 A. Yes. It's a yellow generator.

11 Q. All right. Yellow.

12 A. Excavator on a lowboy.

13 Q. For No. 35?

14 A. Yes, ma'am.

15 Q. Okay. How many pieces of green
16 equipment do you see?

17 A. Would you like me to count?

18 Q. Do you see more than five?

19 A. Yes, ma'am.

20 Q. 36 is what you referred to a moment ago
21 and you don't know where it went. 36
22 through 39, correct?

23 A. Yes. 36 through 39 are all the same.

24 Q. Now, Photo 40 through 45, you said that
25 this was a third party who was hauling equipment

1 out. It was 43 is a John Deere excavator. 44
2 through 45 there were two trucks, but you don't
3 know if these were third party being requested
4 by a customer to haul equipment, correct?

5 A. There is one third-party truck there
6 and, no. I do not know. The other vehicle in
7 question is a Sunbelt truck.

8 Q. And that is in which photograph?

9 A. 44.

10 Q. And in 45, that's the outside hauler.
11 You mentioned a moment ago that you did speak to
12 him later and the vehicle next to it is it a
13 customer vehicle?

14 A. I don't know. I spoke with the
15 gentleman earlier, not later.

16 Q. Oh, excuse me. Earlier.

17 A. Yes.

18 MS. HILL: No further questions of this
19 witness at this time. He is going to be
20 testifying in Sunbelt's case in chief. We
21 reserve the right of course for recross.

22 JUDGE ROSAS: Okay. Redirect?

23 MR. WIESE: May I have a couple
24 minutes, your Honor? Thank you.

25 JUDGE ROSAS: Off the record.

1 (Whereupon, a short recess was
2 taken.)

3 JUDGE ROSAS: Okay. On the record.

4 REDIRECT EXAMINATION

5 BY MR. WIESE:

6 Q. Mr. Marsolek, I am going to start by
7 going back to your affidavit on this matter. So
8 I am going to show you a copy of your affidavit
9 which was discussed earlier during cross.

10 JUDGE ROSAS: Wait. What's the
11 question before you show him his affidavit?
12 What are you trying to refresh.

13 MR. WIESE: I am trying to -- I am
14 trying to clear up the attempted --

15 JUDGE ROSAS: Ask the question.

16 BY MR. WIESE:

17 Q. Do you recall being asked -- Thank you.

18 MS. HILL: Sorry.

19 BY MR. WIESE:

20 Q. Do you recall from your testimony
21 yesterday being asked some questions about
22 whether you took a picture referred to in your
23 affidavit?

24 A. Yes.

25 Q. And do you recall where you were when

1 you took that picture referenced in your
2 affidavit?

3 A. Yes.

4 Q. Okay. And where were you when you took
5 that picture referenced on Page 1 of your
6 affidavit?

7 A. I took the picture at the FedEx
8 facility when the vehicle got there. It
9 unloaded and then as it left, so I took a
10 picture of it entering the facility with the
11 machine on it and then when it left with the
12 machine off of it indicating that it was dropped
13 off there.

14 Q. So I'd like to go back in the pictures
15 now for a second. If you look at Pages 1
16 through 4 of the exhibit.

17 A. Okay.

18 Q. Thank you. Do these pictures show some
19 work bays?

20 A. Yes. In the background there is work
21 bays in the picture.

22 Q. Okay.

23 A. Pictures.

24 Q. And if you go -- and sorry. I am going
25 to be -- is your document -- is your exhibit in

1 order by page number?

2 A. I don't know if I somehow end up with
3 two sets here now but I can get it in order here
4 shortly. There is lots of layers of photos up
5 here, so...

6 Q. Yeah. Your Honor, in the interest of
7 time may I approach the witness and help?

8 A. I got so many pictures up here.

9 MR. WIESE: Let me --- Can I take --

10 THE WITNESS: Yeah. Go ahead.

11 MR. WIESE: So you need 30 on.

12 THE WITNESS: I started putting them in
13 two separate piles. I apologize.

14 BY MR. WIESE:

15 Q. Do you have other pictures that aren't
16 stacked up there?

17 A. Do I have other pictures? Yes. There
18 are some other pictures here I thought but they
19 are not mine. It's another pile. This is 1
20 through -- 1 through 29. Yep. Perfect. Thank
21 you.

22 Q. Yep.

23 A. I apologize for that.

24 Q. Thank you, your Honor.

25 With so if we look at Pages 1 through 4

1 of the exhibit again, do those pictures show
2 work bays?

3 A. Yes, they do, in the background.

4 Q. Okay. And then if you go to Page 11 of
5 the exhibit --

6 A. Okay.

7 Q. -- does this picture show those same
8 work bays as was in 1 through 4? Are these the
9 same work bays?

10 A. I don't believe they are the same.
11 They are the same building but I believe these
12 are further down the building. I believe there
13 is if I remember right there is four, maybe five
14 doors.

15 Q. Uh-huh.

16 A. These would be the furthest north
17 doors, northeast doors.

18 Q. And if you go -- if you look a couple
19 pictures down and go to Page 14 --

20 A. Yes.

21 Q. -- is the work bay in Page 14 of the
22 exhibit shown in Page 11 of the exhibit if you
23 can tell?

24 A. Yes, it is.

25 Q. And which work bay is that in Page 11

1 is shown in Page 14 of the exhibit?

2 A. Which one is it?

3 Q. Which work bay from Page 11? The left
4 work bay or the right work bay is shown in
5 Page 14?

6 A. Oh, okay. It's the left work bay from
7 Page 11 in Page 14. The far left side of the
8 picture.

9 Q. And if you compare Page 11 with
10 Pages 16 through 20 --

11 A. 16 through 20 you said?

12 Q. Yes.

13 A. Okay.

14 Q. Are these are the work bays in Pages 16
15 through 20 of the exhibit the same as the work
16 bays shown in Page 11, the same work bays?

17 A. Yes.

18 Q. If you go to Page 24 of the exhibit.

19 A. Yes, sir.

20 Q. Is this -- if you can tell, is this the
21 same work bay as on Page 11 of the exhibit?

22 A. Yes. I believe it's one of them.

23 Q. Going -- You can put Page 11 back in
24 the stack. You were questioned on cross
25 examination about Page 25 of the exhibits.

1 A. Yes, sir.

2 Q. And you had started to answer a
3 question and then there was an objection and you
4 weren't able to finish your answer. Do you
5 recall what you were going to say at that time?

6 A. I don't quite remember the question.

7 MR. WIESE: Okay. No further
8 questions.

9 JUDGE ROSAS: Charging Party, anything?

10 MR. RYAN: No, your Honor.

11 JUDGE ROSAS: Any follow up, Counsel?

12 MS. HILL: No, your Honor. Thank you.

13 JUDGE ROSAS: Okay. Sir, you are
14 excused. Do not discuss your testimony with
15 anyone until you are advised otherwise by
16 counsel, all right?

17 THE WITNESS: All right. Thank you.

18 JUDGE ROSAS: Are you ready with the
19 next witness?

20 MR. WIESE: Your Honor, before we
21 proceed with the next witness, there are a
22 couple of outstanding subpoena issues that I
23 don't know if you'd like to discuss now or --

24 JUDGE ROSAS: Okay.

25 MR. WIESE: Okay. So with respect to

1 the subpoena documents that I have received,
2 there are several redactions in those documents
3 which I have forwarded Ms. Hill to. There are
4 also the documents are not organized pursuant to
5 request as was clearly instructed in the
6 subpoenas themselves. There also appear to be
7 documents missing although it's very difficult
8 to tell, again, because the documents are not
9 organized by request again pursuant to my
10 instructions.

11 And finally, with regard to subpoena
12 production, and I don't know if this is the
13 appropriate form to make this argument or if
14 it's in front of the special master, but there
15 are a large number of documents that are still
16 subject to review and the reason that that
17 review is taking so long is because of the
18 deficiencies in respondents privilege log which
19 are indicated in the first special master's
20 report.

21 And so in light of all of those
22 deficiencies and others which may as of now be
23 undiscovered, I am requesting the -- that -- so
24 these next witnesses that I am calling are all
25 611(c) witnesses. There is a group of three

1 witnesses. I am requesting that I be allowed to
2 recall these witnesses on rebuttal to address
3 the deficiencies in respondent's subpoena
4 production to the extent that other documents
5 are produced after I close my case in chief, to
6 the extent that there is ongoing production
7 during the week after I rest my case in chief, I
8 would respectfully request that I be allowed to
9 recall these witnesses and address the
10 outstanding documents with them in order frankly
11 for efficiency so we can get as much done as we
12 can this week.

13 JUDGE ROSAS: Well, technically what
14 you are talking about is reserving the right to
15 recall them as part of your prime facia case,
16 not on rebuttal.

17 MR. WIESE: Well, correct.

18 JUDGE ROSAS: And my understanding is
19 that Judge Steckler has a long way to go --

20 MR. WIESE: Right.

21 JUDGE ROSAS: -- in review and I assume
22 there is going to be production requirements on
23 your part or review -- review of the documents
24 on your part and my sense is that's probably not
25 going to be accomplished this week.

1 MR. WIESE: I am trying to get it done
2 this week, your Honor, but --

3 JUDGE ROSAS: I don't see how she is
4 going to get it accomplished this week.

5 MR. WIESE: Right, and the reason for
6 that is due to the deficiencies in respondent's
7 privilege log.

8 MS. HILL: Objection to that.

9 JUDGE ROSAS: Go ahead counsel.

10 MS. HILL: First of all, I think Mr.
11 Wiese and I already discussed, I think Mr. Ryan
12 was there, when we were having the discussion I
13 said yes, you can recall Mr. Bogardus, Ms.
14 Strohmeier and Mr. Mayfield for rebuttal
15 purposes. We'll have them available.

16 Secondly, the issues -- and I haven't
17 seen an update from the special master whether
18 she did get called for jury duty. Did anybody?
19 So I don't know if that's the issue.

20 JUDGE ROSAS: She is continuing on,
21 yeah.

22 MS. HILL: But she also has -- we
23 provided to her that certain documents have the
24 I guess watermark across them indicating they
25 are privileged -- that Sunbelt considers them to

1 be privileged, okay. That is a clear indication
2 to the special master that they are something
3 that we consider to be subject to as our log
4 says to attorney/client privilege.

5 With respect to the documents that we
6 provided to the NLRB, we gave them today a chart
7 indicating his request with match up. Now, yes,
8 as I told him yesterday or the day before, I
9 apologize, I can't remember which day, the --
10 there are -- so we don't have any documents.
11 You know, I started off by indicating we don't
12 have an org chart and things like that. And so
13 I have tried by with this chart to indicate what
14 we were able to find.

15 I did tell him yesterday that I was
16 pleased and surprised to find out that Mr.
17 Mayfield after a lot of searching, and you can
18 cross examine him about his search, was finally
19 able to find the remainder of his negotiation
20 notes. He also downloaded his calendar. I
21 understand that the front is very small, but
22 that was the best that he could do in being able
23 to provide that.

24 We have attempted to provide everything
25 and it's not just asking these three witnesses

1 for documents. We have -- Sunbelt has asked
2 numerous people for documents in order to supply
3 them. Some of the documents I suspect are --
4 can only be available if other outside entities
5 are subpoenaed for documents but we have tried
6 very, very hard.

7 JUDGE ROSAS: All right. So you are
8 going to call these witnesses.

9 MR. WIESE: Correct, your Honor.

10 JUDGE ROSAS: Then we are going to this
11 deal with the completion of the document
12 production and see where we are at that point.

13 MR. WIESE: Correct. Correct.

14 JUDGE ROSAS: So --

15 MS. HILL: Thank you, your Honor.

16 JUDGE ROSAS: So get on with the
17 witnesses.

18 MR. WIESE: Okay. Okay. I mean --

19 JUDGE ROSAS: You do the best you can
20 and you'll be entitled to recall them with
21 respect to documents -- with respect to any
22 questions you may have with respect to documents
23 that are subsequently provided.

24 MR. WIESE: As part of my case in chief
25 or --

1 JUDGE ROSAS: As part of your case in
2 chief. Right. I think given that given that we
3 are not going to be able to get through this, I
4 mean, there have been other occasions where I
5 have proceeded into respondent's case and
6 whether it's retroactively calling witnesses as
7 part of the General Counsel's case or
8 interspersing it amongst the Respondent's case
9 or as part of rebuttal, that's not going to
10 happen this week. It doesn't make sense to do
11 that since this is not going to get done.

12 I think we can keep it clean. We can
13 keep it with the General Counsel and Charging
14 Party's cases before the Respondent's case can
15 start. Okay. So call your next witness.

16 MR. WIESE: Okay. Counsel for the
17 General Counsel calls Jason Mayfield to the
18 stand.

19 (Whereupon, a discussion was had
20 off the record.)

21 JUDGE ROSAS: On the record. Next
22 witness.

23 MR. WIESE: Your Honor, General Counsel
24 calls Jason Mayfield to the stand.

25 JUDGE ROSAS: Sir, can you please raise

1 your right hand?

2 (Witness sworn.)

3 JUDGE ROSAS: All right. Please have a
4 state and spell your name and provide us with an
5 address.

6 THE WITNESS: Jason Mayfield, 679
7 Heartland Drive, Sugar Grove, Illinois.

8 JUDGE ROSAS: Spell your name, please.

9 THE WITNESS: J-A-S-O-N,
10 M-A-Y-F-I-E-L-D.

11 JASON MAYFIELD,
12 after being first duly sworn, deposeth and saith
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. WIESE:

16 Q. Mr. Mayfield, my name is Tyler Wiese.
17 I am an attorney with the National Labor
18 Relations Board. I am going to be asking you
19 some questions today related to the Franksville
20 facility, Franksville Sunbelt facility. These
21 are a stack of documents that we'll be going
22 through. You don't need to look at them right
23 now. Ill direct your attention when we are --

24 A. This stuff here, too?

25 Q. Those documents have been entered into

1 evidence and I will direct your attention to the
2 specific documents when and if we need to.

3 So, Mr. Mayfield, what is your position
4 with Sunbelt Rentals?

5 A. Regional vice president.

6 Q. How long have you been in that position
7 for?

8 A. A year and ten months now.

9 Q. And what area are you the regional vice
10 president for?

11 A. For Region 9.

12 Q. And what geographic area is Region 9?

13 A. As far west as the Dakotas, as far east
14 as Michigan and everything in between.

15 Q. Is the Franksville facility within
16 Region 9?

17 A. It would be.

18 Q. Okay. Who reports to you from Sunbelt?

19 A. The district managers do.

20 Q. And how many district managers are
21 there in Region 9?

22 A. Seven.

23 Q. Are you familiar with an individual
24 named Bo Bogardus?

25 A. I am.

1 Q. Okay. Did Mr. Bogardus report to you
2 at some point?

3 A. Yes, he did.

4 Q. Okay. And what period of time did
5 Mr. Bogardus report to you?

6 A. For roughly one year and seven months.

7 Q. Do you recall what months and year that
8 was?

9 A. It would have been January 2018 to the
10 first week of July 2019.

11 Q. Besides the district managers, are
12 there any other individuals who report to you?

13 A. Yeah. I have a region director of
14 operations and a regional sales director.
15 That's pretty much it.

16 Q. Is there anybody from human resources
17 who reports to you?

18 A. Yes.

19 Q. Who from human resources?

20 A. Rebel Strohmeier.

21 Q. Has Rebel Strohmeier been your human
22 resources report during the entire time you have
23 been a regional vice president?

24 A. Correct.

25 Q. And what's her position?

1 A. Regional HR manager.

2 Q. Okay. Who do you report to?

3 A. My executive vice president.

4 Q. What's that individual's name?

5 A. Tim Robinette.

6 Q. In your position as regional vice
7 president, is that the correct title regional
8 vice president?

9 A. Yes.

10 Q. Okay. Thank you. Do you have any
11 involvement in collective bargaining
12 negotiations?

13 A. I do.

14 Q. Could you describe that involvement?

15 A. The primary -- the ultimate decision
16 maker of what we agree to TA through the
17 negotiation.

18 Q. And have you been involved in
19 collective bargaining negotiations?

20 A. Yes.

21 Q. How many?

22 A. Just over 60.

23 Q. Have you been involved in the
24 Franksville negotiations?

25 A. I have.

1 Q. Okay. In what capacity?

2 A. As a regional vice president.

3 Q. As a regional vice president in the
4 Franksville negotiations, what have you been
5 doing?

6 A. Negotiating through a CBA, potential
7 CBA.

8 Q. And what is your role specifically in
9 the negotiations at the CBA or for the CBA at
10 the Franksville facility?

11 A. Well, one of the decision makers and
12 the ultimate decider.

13 Q. So you are the one with the authority
14 to sign off on tentative agreements?

15 A. Correct.

16 Q. Okay. Do you have disciplinary
17 authority as the regional vice president?

18 A. I do.

19 Q. Who do you have discipline authority
20 over?

21 A. The district managers.

22 Q. As the regional vice president, do you
23 have authority to lay off employees?

24 A. A district manager.

25 Q. A district manager has that authority?

1 A. Well, the district manager would be
2 directly responsible for the profit centers,
3 PCs. The PCs would have direct authority over
4 those employees that work within the PC.

5 Q. And so if there were a layoff at a
6 profit center, that would be decided at the
7 district manager level?

8 A. The profit center would be the primary
9 and then obviously an influencer would be the
10 district manager, the DM.

11 JUDGE ROSAS: You know, Counsel, this
12 is a 611(c) witness, is it not?

13 MR. WIESE: That's correct.

14 JUDGE ROSAS: So you are entitled to
15 lead.

16 MR. WIESE: Okay. I was establishing
17 the authority for 611(c), but I'll request -- I
18 request to examine this witness under 611(c).

19 JUDGE ROSAS: It's granted.

20 BY MR. WIESE:

21 Q. Okay. So with respect to a layoff at a
22 profit center, what authority does district
23 manager have in that process?

24 A. The district manager would be brought
25 in to table the discussion on a potential

1 termination and/or layoff.

2 Q. And then with respect to your role in
3 that process, do you have any role?

4 A. No. They could -- If they decided to
5 do a layoff determination, they could make that
6 determination on their own.

7 Q. So is your testimony that you have
8 never been involved in a layoff or termination
9 decision at a profit center?

10 A. That would usually be left to a
11 district manager or a PCM and a district
12 manager.

13 Q. Okay. That's the usual case but have
14 you ever been involved in those decisions?

15 A. I have been notified of a decision
16 being made.

17 Q. Have you made that decision to lay off?

18 A. I haven't made that decision.

19 Q. I am going to show you a copy of your
20 affidavit which was given to the NLRB on
21 October 30th of 2019. I am just going to have
22 you read along silently while I read out loud
23 and confirm if I have read this statement
24 correctly: So starting on Page 1 lines 9
25 through 10, do you see where I am at?

1 A. Uh-huh.

2 Q. And this is your affidavit; is that
3 correct?

4 A. Yes.

5 Q. And if you turn to the last page, it's
6 your signature on the document?

7 A. Yes.

8 Q. So, again, turning back to the first
9 page and I apologize, lines 9 and 10, I was the
10 sole person who made the decision to reorganize
11 the Franksville and into a will-call facility.
12 I made that decision on August 5, 2019.

13 Did I read that correctly?

14 A. You did.

15 Q. Okay. Thank you. I am going to
16 retrieve that from you. And the decision to lay
17 off the bargaining unit employees at the
18 Franksville facility that was made on August 5,
19 2019 to your knowledge?

20 A. The decision was made on August 5th,
21 the layoff was not.

22 Q. Right. The layoff was a couple days
23 after, correct?

24 A. Correct. It would have been on the
25 8th.

1 Q. And we are talking about 2019 here,
2 correct?

3 A. Yes.

4 Q. And the layoff at the Franksville
5 facility, the bargaining unit that was being
6 laid off that consisted of mechanics; is that
7 correct?

8 A. Correct.

9 Q. And prior to August of 2019, the unit
10 also included some drivers; is that correct?

11 A. Yes.

12 Q. Do you recall when the last driver was
13 terminated in the unit?

14 A. I do not.

15 Q. Okay. And the unit -- and I have the
16 unit description up there if you want to
17 reference it.

18 A. Okay.

19 Q. That's in General Counsel Exhibit 2 up
20 there. So it will actually be in a different
21 area. I can direct your attention to it.

22 A. That's fine.

23 Q. Okay. So the unit consisted of all the
24 mechanics at the Franksville facility, correct?

25 A. The unit prior to August or the unit at

1 the time of August?

2 Q. Yes. Yes. Yes. Thank you. Right.

3 Right. Right. Before the elimination of the
4 unit, the unit consisted of all the mechanics at
5 the Franksville facility?

6 A. Yes.

7 Q. And all of the drivers at that
8 facility?

9 A. Prior to the decision on August 5th?

10 Q. Yes.

11 A. Yes.

12 Q. With respect to the layoff or the
13 elimination of unit, why -- why August 5th of
14 2019?

15 A. Why August 5th?

16 Q. Yeah.

17 A. The business at that point was down
18 31 percent from where it was the prior year.

19 Q. Okay. And that would be reflected in
20 the documents?

21 A. Yes.

22 Q. Like a consolidated income statement?

23 A. Correct.

24 Q. Did you review those documents then?

25 A. I did.

1 Q. When did you review them?

2 A. Prior to August 5th.

3 Q. Can you recall when?

4 A. Anywhere from a week to four weeks
5 prior to that.

6 Q. Is it routinely part of your job to
7 review consolidated income statements for
8 facilities?

9 A. Yes.

10 Q. Okay. So if we go to the stack of
11 documents that I had handed you that are paper
12 clipped together and we are going to be going a
13 little bit out of order but if you go to --

14 MR. WIESE: Actually, your Honor, could
15 we go off the record for a second?

16 JUDGE ROSAS: Sure.

17 (Whereupon, a short recess was
18 taken.)

19 BY MR. WIESE:

20 Q. Thank you for your patience, Mr.
21 Mayfield.

22 A. Yeah.

23 Q. So if you go through again the stack of
24 documents that I handed you, if you look it's
25 probably about four pages in, there is an E-mail

1 that's marked General Counsel Exhibit 31.

2 A. Yep.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. And what is it?

6 A. This is the framework for generating a
7 layoff letter.

8 Q. Was this -- were you involved in
9 requesting these layoff letters?

10 A. I was.

11 Q. Okay. And do you recall when you made
12 that request?

13 A. That would have been on the 7th.

14 Q. Okay. But the E-mail --

15 A. Sorry. Sorry. August 5th.

16 Q. No. That's okay.

17 MR. WIESE: I'll offer General Counsel
18 Exhibit 31.

19 MS. HILL: No objection.

20 JUDGE ROSAS: General Counsel's 31 is
21 received.

22 (GCX 31 received.)

23 BY MR. WIESE:

24 Q. And, Mr. Mayfield, with respect to the
25 upper left-hand corner of that exhibit, it looks

1 like there is a blocked out area. Do you see
2 that?

3 A. Yes.

4 Q. Okay. Does that appear to be redacted
5 information?

6 A. I couldn't tell you.

7 Q. Okay.

8 MS. HILL: If, your Honor, we have had
9 permission in courts and the NLRB whenever staff
10 members have to print out these documents that
11 have been requested to redact the name of the
12 staff member and that's purely all that it was,
13 so...

14 MR. WIESE: Okay. If the record
15 reflects that that's what it is, then I don't
16 have any issue.

17 MS. HILL: That's what it is, sir,
18 because it then causes more subpoenas for people
19 to show up.

20 MR. WIESE: Understood. Understood.

21 BY MR. WIESE:

22 Q. Mr. Mayfield, I'd like to now direct
23 your attention in General Counsel Exhibit 32.

24 A. Uh-huh.

25 Q. Do you recognize these documents?

1 A. I do.

2 Q. And were these letters attached to the
3 E-mail in General Counsel Exhibit 31?

4 A. I would be inferring that based off of
5 what is written but I don't recall.

6 Q. Okay. Okay. But there were layoff
7 letters attached to the E-mail in General
8 Counsel Exhibit 31?

9 A. You are inferring that and I am
10 inferring it based on what I read but I can't I
11 don't recall, so...

12 Q. But if you look at general back at
13 General Counsel Exhibit 31, do you see about
14 five lines down it says attachments there?

15 A. I do.

16 Q. Okay. And then it has three layoff
17 letters there; is that correct?

18 A. Yes.

19 Q. Okay. And is it your experience when
20 dealing with Outlook that if an E-mail says
21 attachments and has attachments indicated that
22 there are attachments to that E-mail?

23 A. Yes.

24 Q. So going back to General Counsel
25 Exhibit 32, these are the layoff letters for

1 three Sunbelt employees, correct?

2 A. Yes.

3 Q. And these three employees all worked at
4 the Franksville facility, correct?

5 A. Correct.

6 Q. And they were all part of the
7 bargaining unit?

8 A. Correct.

9 MR. WIESE: I'll offer General Counsel
10 Exhibit 32.

11 MS. HILL: No objection, your Honor.

12 JUDGE ROSAS: General Counsel's 32 is
13 received.

14 (GCX 32 received.)

15 BY MR. WIESE:

16 Q. So there should be a separate stack of
17 documents next to you. There is going to be a
18 document marked GENERAL counsel Exhibit 17. I
19 believe I pulled that out and set it to -- Okay.
20 Do you have that document?

21 A. I do.

22 Q. Okay. Do you recognize this document?

23 A. I do.

24 Q. Okay. And was this the letter that you
25 sent to the union indicating the decision you

1 had made to lay off the employees at the
2 Franksville facility?

3 A. Well, the reorganization of Profit
4 Center 776.

5 Q. Okay. And Profit Center 776 is the
6 Franksville facility, correct?

7 A. Yes but it's the statement of the
8 reorganization, not necessarily the layoffs.
9 The layoffs still had to be negotiated.

10 Q. Okay. So it was an open decision in
11 your mind then at that point whether employees
12 were being laid off?

13 A. It was a statement that we were
14 reorganizing the PC and that's what the
15 conversation would be under negotiations would
16 be on Thursday.

17 Q. But you had made the decision to lay
18 off employees before that date correct?

19 A. We had put together the layoff
20 paperwork to have that discussion as part of our
21 negotiation on Thursday.

22 Q. And you had already drafted the
23 letters?

24 A. The letters were drafted, correct.

25 Q. And as we discussed earlier, you gave a

1 sworn statement in which you made the decision
2 to lay off the employees on August 5th, correct?

3 A. Well, there is a negotiation still has
4 to take place on Thursday, so the letters were
5 prepared for those negotiations to happen on
6 Thursday.

7 Q. And in your letter, you stated that you
8 were bargaining the impact of that reorganized,
9 correct?

10 A. Sure.

11 Q. It doesn't mention anything about
12 bargaining the decision for that reorganization,
13 does it?

14 A. Bargaining -- it says that bargaining
15 the impact for our reorganization. What is the
16 impact to the reorganization?

17 Q. Are you asking me?

18 A. Well, I mean, that's what it says here.
19 Bargaining the impact for the reorganization so
20 that means on that Thursday, that's when the
21 negotiations take place.

22 Q. And those negotiations were regarding
23 the impact?

24 A. Yes.

25 JUDGE ROSAS: What calendar day is

1 Thursday?

2 THE WITNESS: It would have been the
3 8th.

4 BY MR. WIESE:

5 Q. Mr. Mayfield, this exhibit in General
6 Counsel 17, was this was your first
7 communication to the union regarding the
8 reorganization?

9 A. Correct.

10 Q. The purpose of this letter was to
11 notify the union of the decision to reorganize
12 the facility, correct?

13 A. Correct.

14 Q. And the reorganization of the facility
15 involved the layoff of the bargaining unit
16 employees, is that correct?

17 A. That would have been part of Thursday's
18 negotiation.

19 Q. So you had not made the decision to lay
20 off employees, that's your sworn testimony
21 today?

22 A. Well, the decision was to have a
23 discussion on Thursday about what the
24 reorganization was going to be.

25 Q. And the reorganization was involving

1 the layoff of bargaining unit parties, correct?

2 A. That would have been negotiable.

3 Q. So it was an open topic of negotiation
4 in your view?

5 A. That was the time to have it.

6 Q. Despite the fact that you had already
7 requested layoff letters for all of those
8 employees prior to that day?

9 A. Yes but I think you have to be
10 prepared. It's negotiations.

11 Q. And if you look at the layoff letters
12 in General Counsel Exhibit 32, if you look at
13 the first letter, this is a letter directed to
14 Mr. Rivera. He is a bargaining unit employee,
15 correct?

16 A. Correct.

17 Q. And if you go two lines down into the
18 letter it says your last day will be Wednesday,
19 August 7, 2019, correct?

20 A. Yes.

21 Q. That indicates that he is being laid
22 off on that day?

23 A. That's what it would have indicated,
24 yes.

25 Q. Okay. And that letter was drafted

1 before August 8th of 2019?

2 A. Correct.

3 Q. Mr. Mayfield, in your position as
4 regional vice president, have you laid off
5 employees in the past prior to the Franksville
6 layoffs?

7 A. Over my career or with Sunbelt?

8 Q. With Sunbelt. Thank you.

9 A. No.

10 Q. And when you explained the layoff
11 decision to the union at the bargaining on
12 August 8th, you referred to the reorganization
13 as changing the Franksville facility to a
14 will-call facility; is that accurate?

15 A. A small equipment facility, so
16 will-call and small tool.

17 Q. How many other will-call or small tool
18 facilities are there in your region?

19 A. Well, we have smaller locations so
20 there is a handful of smaller locations.

21 Q. But are those smaller locations are
22 those considered will-call/small tool locations?

23 A. I wouldn't necessarily define them as
24 will call and small tool locations.

25 Q. So the Franksville facility is the only

1 will-call and small tool location in your
2 region?

3 A. Yep.

4 Q. Does Sunbelt maintain any policies that
5 govern the procedures for layoffs?

6 A. They would be ran through human
7 resources.

8 Q. Did you run this layoff through human
9 resources?

10 A. Yes.

11 Q. When did you do that?

12 A. That would have been on the date of the
13 August 5th.

14 Q. Who did you speak to?

15 A. Vicky Gibson.

16 Q. And what do you recall from your
17 conversation with Ms. Gibson?

18 A. That we would be reorganizing Profit
19 Center 776.

20 Q. Any written communications with Ms.
21 Gibson?

22 A. No.

23 Q. Do you typically communicate with Ms.
24 Gibson in writing?

25 A. It's a mix. It's both.

1 Q. Is there a reason you didn't put these
2 communications with Ms. Gibson in writing?

3 A. No particular reason.

4 Q. This was the first time laying off
5 employees at Sunbelt and you didn't feel the
6 need to put any communications with Ms. Gibson
7 in writing?

8 A. Ms. Gibson is highly professional as a
9 seasoned human resource manager. I would think
10 something of this nature is probably something
11 she has experienced over the years.

12 Q. Did you ask her if she had done layoffs
13 in the past?

14 A. In this specific conversation, I can't
15 say that I asked her.

16 Q. With respect to a will-call facility --
17 or let's back up for a second. You talked about
18 the Franksville facility being turned into a
19 small equipment/will-call facility. Am I
20 referring to that correctly?

21 A. Yes.

22 Q. Okay. And with respect to a small
23 equipment, how would you define that?

24 A. Anything that could be hauled on an
25 anything less than a CDL required license, so

1 basically a Class C license with a gross vehicle
2 weight rating of less than 10,000 pounds.

3 Q. Did you communicate this to the union
4 during bargaining?

5 A. Yes.

6 Q. And what does a will-call facility mean
7 or was what is the will-call portion of this
8 statement?

9 A. Are you asking me to define will-call?

10 Q. With respect to the Franksville
11 facility, yes.

12 A. So we have a lot of locations that are
13 will-call. In essence it's where a customer
14 picks up the equipment themselves.

15 Q. So because you had only small equipment
16 at that facility, there was no need for
17 mechanics, correct? That's what you told the
18 union?

19 A. Correct.

20 Q. What happens if a small piece of
21 equipment breaks down?

22 A. It would be checked in by one of our
23 customer supporting reps on the counter and if
24 it was any major or extensive repairs, we would
25 probably sell it and just replace it. And the

1 description I gave was similar to like a Home
2 Depot.

3 Q. Let's say I was a customer and I called
4 the Franksville facility and I wanted to order a
5 piece of large equipment, okay, how would that
6 situation -- and I am talking again post
7 August 8th post reorganization, how would that
8 situation be handling?

9 A. I'd be speculating stating that I know
10 specifically how the individual is going to
11 handle it but I would hope --

12 JUDGE ROSAS: No speculating, sir.
13 Only if you know.

14 THE WITNESS: I don't know a hundred
15 percent. I don't know.

16 BY MR. WIESE:

17 Q. Okay. Okay. Did you provide any
18 direction to the employees at the Franksville
19 facility or the managers at that facility as to
20 how to handle orders for large equipment that
21 are made at that facility?

22 A. Yeah. Equipment that could be hauled
23 and a gross vehicle rating of less than 10,000
24 pounds is how that store would be equipped.

25 Q. But let's say I called -- if someone

1 called Franksville and tried to order something
2 that was larger than 10,000 pounds, how would
3 that be handled, do you know?

4 A. Yeah. They could take the order and
5 pass it on to another location.

6 Q. Are there policies governing that?

7 A. No.

8 Q. Did you tell anyone that that's what
9 they should do?

10 A. What I did state is I stated what we
11 could do based on your ability to service the
12 customer at that location.

13 Q. Who did you state that to? Do you
14 recall?

15 A. That would have been stated to the
16 manager at the time.

17 Q. And who is that individual?

18 A. Tito.

19 Q. What was that?

20 A. Robert.

21 Q. What's Robert's last name?

22 A. I can't say his last name now.

23 Q. Does Rivera sound --

24 A. Rivera. Thank you.

25 Q. Does Mr. Rivera is related to any

1 bargaining unit employees do you know or former
2 in bargaining unit you employees?

3 A. Yes.

4 Q. Who is he related to?

5 A. Mario Rivera.

6 Q. Thank you. I'd like to direct your
7 attention now to a document that's already been
8 entered into evidence, general Counsel
9 Exhibit 22. It's going to look like a picture
10 of the Sunbelt site.

11 A. So which stack would that be in?

12 MR. WIESE: May I approach, your Honor?

13 BY MR. WIESE:

14 Q. So, Mr. Mayfield, there is several
15 different ways to order equipment from Sunbelt,
16 isn't there?

17 A. Yes.

18 Q. And one of those ways is by calling the
19 Sunbelt store?

20 A. Correct.

21 Q. And another way would be walking into
22 the store and just talking to someone at the
23 counter?

24 A. Yes.

25 Q. And then you also have an online

1 ordering portal for equipment; is that correct?

2 A. Correct.

3 Q. So if you will direct your attention to
4 General Counsel Exhibit 22, this appears to be
5 and, again, correct me if I am wrong, but there
6 appears to be the online ordering portal for
7 Sunbelt; is that correct?

8 A. It looks to be that way, yeah.

9 Q. And at Page 1 of this document, this
10 appears to be the online ordering part portal
11 for the Franksville facility; is that correct?

12 A. Well, the online portal is for Sunbelt.
13 They would have delineated those for
14 Franksville, yes.

15 Q. And that's indicated on the document?

16 A. Oh, there you go.

17 Q. Yeah.

18 A. Yep.

19 Q. Correct?

20 A. Yep.

21 Q. In the upper corner of the document
22 middle of the page job site location,
23 Franksville, Wisconsin?

24 A. Yes.

25 Q. And information that's indicated in

1 that location on the website, that indicates the
2 site that the equipment is being ordered from,
3 correct? So if you go over to Page 5 of the
4 document --

5 A. Okay.

6 Q. -- so that would be equipment that
7 would be ordered from the Waukesha location; is
8 that correct, Page 5?

9 A. Yeah. Based on the top of the page,
10 Waukesha.

11 Q. Okay. So Sunbelt rents skid-steers,
12 right?

13 A. Yes.

14 Q. And skid-steers break down, don't they?

15 A. Yes.

16 Q. And Sunbelt also rent scissor lifts; is
17 that right?

18 A. Yes.

19 Q. And that equipment breaks down as well?

20 A. Yes.

21 Q. And Sunbelt represents, or excuse me,
22 rents what are called UTVs; is that right?

23 A. Yes.

24 Q. Okay. And what is a UTV?

25 A. An all-terrain vehicle or utility

1 vehicle.

2 Q. And those pieces of equipment also
3 break down; is that right?

4 A. You hope not, but yes.

5 Q. Sometimes they do, right?

6 A. Sure.

7 Q. And after August 8th of 2019, there is
8 still repair work being done on these types of
9 vehicles at the Franksville facility, correct?

10 A. I don't know.

11 Q. So you aren't aware of that?

12 A. No.

13 Q. Would it surprise you to know that
14 there is repair work being done on those
15 vehicles at that facility?

16 A. No, because that's within that criteria
17 of under 10,000 pounds.

18 Q. Do you know who is doing work at that
19 facility?

20 A. It would either be one of the
21 coordinators, an outside service or a service
22 manager.

23 Q. So as we discussed a little bit
24 earlier, you met with the union on August 8th
25 to --

1 A. Yes.

2 Q. -- discuss the reorganization, correct?

3 A. Yes.

4 Q. And then you met again with the union
5 on August 16th of 2019; is that right?

6 A. Correct.

7 Q. And the focus of that meeting on
8 August 16th was to negotiate severance
9 agreements for two of the three bargaining unit
10 employees; is that right?

11 A. Yes.

12 Q. Okay. And that was Mr. Romanowski and
13 Mr. McKellips?

14 A. Yes.

15 Q. At that meeting on August 16th, there
16 was no discussion about reaching an actual
17 Collective Bargaining Agreement with the union,
18 was there?

19 A. The store was being reorganized. They
20 would not have had the quantity of members or
21 quantity of bargaining unit required to have a
22 negotiation.

23 Q. Okay. So there were no collective
24 bargaining negotiations that day?

25 A. Just the negotiating the

1 reorganization.

2 Q. Okay. And during that session on
3 August 16th, the parties were able to negotiate
4 some severance agreements; is that right?

5 A. Yes.

6 Q. Covering both employees?

7 A. Yes.

8 Q. And as of August of 2019, the parties
9 have been attempting to negotiate a Collective
10 Bargaining Agreement for over a year; is that
11 accurate?

12 A. Yes.

13 Q. Since May of 2018; does that sound
14 about right?

15 A. Yes. Uh-huh.

16 Q. And between May of 2018 and August
17 of 2019, the parties have met less than once a
18 month on average, does that sound about right?

19 A. Right at once a month.

20 Q. So there are I believe 15 months
21 between May of 2018 and August of 2019, does
22 that sound right?

23 A. Yes.

24 Q. So you believe that the parties had 15
25 bargaining sessions during that time?

1 A. If I recall, it was 13 bargaining
2 sessions and the last two were for the
3 reorganization and then in two months we had --
4 in two different months we had two different
5 bargaining sessions.

6 Q. Right. But there were other months
7 where you didn't have bargaining sessions,
8 right?

9 A. Correct.

10 Q. Do you recall during bargaining the
11 union requesting to meet sooner than what
12 Sunbelt agreed to, correct? Do you recall that
13 being brought up?

14 A. I don't recall that.

15 Q. You never recall the union asking to
16 meet the week following a bargaining session?

17 A. The week following, I do not.

18 Q. What about two weeks following a
19 session?

20 A. I don't.

21 Q. Do you ever recall the union asking to
22 meet on consecutive days?

23 A. No.

24 Q. Do you ever recall any Sunbelt
25 representatives stating that they were too busy

1 to meet more frequently with the union during
2 collective bargaining negotiations?

3 A. Not too busy. There were events that
4 were happening, justified events.

5 Q. When those events were explained -- Or
6 let's back up.

7 Do you recall any of those events being
8 explained at the bargaining table?

9 A. I do.

10 Q. I'd like to direct your attention now
11 to a -- to General Counsel Exhibit 27 which is
12 going to be, again, I apologize for jumping
13 around, it should be the top document in the
14 stack of exhibits that I handed to you. Not
15 that stack. It's --

16 A. I got it.

17 Q. It has a list of names. Thank you.
18 Thank you.

19 MS. HILL: Just for purposes of
20 organizing everything, Mr. Wiese, do you want
21 him to start putting what you have handed to him
22 and that you are questioning him about, put that
23 in the big stack now?

24 MR. WIESE: Sure. That would be fine.

25 JUDGE ROSAS: Let's just -- we'll deal

1 with that after he gets off. It's probably not
2 all in order.

3 MS. HILL: Okay.

4 BY MR. WIESE:

5 Q. Mr. Mayfield, do you recognize this
6 document in General Counsel Exhibit 27?

7 A. I recognize -- excuse me. I recognize
8 what's here.

9 Q. Okay.

10 A. That's the extent of it.

11 Q. Okay. Do you recognize the names on
12 this document?

13 A. I do.

14 Q. And do you recognize not necessarily
15 this specific document but what this document is
16 showing?

17 A. Yes.

18 Q. Okay. What is that?

19 A. Hours work.

20 Q. And is this something that Sunbelt
21 keeps in the regular course of its business?

22 A. The data frame like this?

23 Q. Yes.

24 A. No.

25 Q. Are you regularly tracking hours?

1 A. Hours are reviewed by the profit center
2 managers.

3 Q. So this would be -- If you know, is
4 this a document that a profit center manager
5 would be familiar with?

6 A. This specific document, no. Would they
7 be reviewing hours, yes.

8 MR. WIESE: Well, your Honor, I don't
9 know how you like to handle this issue.

10 JUDGE ROSAS: This was produced by
11 respondent.

12 MR. WIESE: Yes.

13 JUDGE ROSAS: I'll take by counsel what
14 it is, if you know.

15 MS. HILL: It was in response to a
16 document request for unfair labor practice
17 charges, hence, if you look at the charge number
18 down there.

19 JUDGE ROSAS: Is it a business record?

20 MS. HILL: Compiled based on the
21 request from the NLRB for specific information
22 so it was created for purposes of exactly what
23 the NLRB agent wanted.

24 JUDGE ROSAS: Okay. So is there any
25 objection to the accuracy of this document, what

1 it purports to represent?

2 MS. HILL: I trust that my client took
3 the information from the bigger report and
4 accurately put it into this. This came directly
5 from the client, sir. Okay. If you are asking
6 did anyone from my office create it, no, sir.

7 JUDGE ROSAS: Okay. Do you know what
8 this chart means.

9 MR. WIESE: Well, I believe based
10 off --

11 JUDGE ROSAS: It's an employee roster.
12 What else does it depicts?

13 MR. WIESE: It depicts hours worked by
14 employees.

15 MS. HILL: Regular and overtime hours.

16 JUDGE ROSAS: Totals for the year
17 stated.

18 MS. HILL: Yes, sir.

19 MR. WIESE: Up to a certain date.

20 JUDGE ROSAS: Okay. I am going to
21 receive this in evidence.

22 MS. HILL: No objection, your Honor.
23 We produced it for the --

24 JUDGE ROSAS: I understand.

25 MR. WIESE: Thank you.

1 (GCX 27 received.)

2 BY MR. WIESE:

3 Q. And, Mr. Mayfield, I assume that you
4 don't know what date this chart runs through, do
5 you?

6 A. I don't.

7 Q. In 2019?

8 A. I don't.

9 Q. Okay. Thank you. But you would agree
10 that all of the employees listed on here are
11 bargaining unit employees, is; is that correct?

12 A. Yes.

13 Q. And that with the exception of
14 Mr. Richter who was on leave, all of those
15 bargaining unit employees were working overtime
16 in 2019; is that accurate?

17 A. Yes.

18 Q. I'd like to go to the next document in
19 the exhibit General Counsel Exhibit 28. Do you
20 recognize this document?

21 A. Yes.

22 Q. And let's start what is this document?

23 A. This was curated for the NLRB.

24 Q. Do you know who curated it?

25 A. This would be curated by a Bo Bogardus.

1 MR. WIESE: I'll offer General Counsel
2 Exhibit 28.

3 MS. HILL: No objection, your Honor.
4 It was produced in response again to an unfair
5 labor practice charge.

6 JUDGE ROSAS: General Counsel 28 is
7 received.

8 (GCX 28 received.)

9 BY MR. WIESE:

10 Q. Mr. Mayfield, starting with the
11 left-hand column on this document below PC.

12 A. Uh-huh.

13 Q. Do you see that, PC column?

14 A. Yes.

15 Q. Okay. And there is a series of numbers
16 below that PC column 365, 366, et cetera. Can
17 you identify that those numbers are referring
18 to?

19 A. The profit center numbers, the
20 locations.

21 Q. Okay. And which -- can you identify
22 what Profit Center 365 is?

23 A. 365 is Waukesha.

24 Q. And what about 366?

25 A. Madison.

1 Q. And 367?

2 A. Green Bay.

3 Q. 776?

4 A. Franksville.

5 Q. And 789?

6 A. Wausau.

7 Q. And 1006?

8 A. Fond du Lac.

9 Q. What information is redacted on this
10 chart?

11 A. I don't know.

12 Q. You weren't involved in redacting it?

13 A. I don't know what was redacted, no.

14 JUDGE ROSAS: By counsel same at the
15 top next to loss revenue?

16 MS. HILL: I believe -- I am trying to
17 remember what it is. I am not going to state
18 for the record what it was but yeah. This
19 was -- I didn't get an objection from the NLRB
20 when we submitted it to it for the unfair labor
21 practice charge. It was just some irrelevant
22 information as I recall there, but I am trying
23 to remember.

24 JUDGE ROSAS: Well, if you can make a
25 note and just get some clarification on that and

1 let counsel know.

2 MS. HILL: Okay.

3 JUDGE ROSAS: Obviously not the
4 identifying information. What the nature of the
5 redaction is.

6 MS. HILL: Okay.

7 BY MR. WIESE:

8 Q. Mr. Mayfield, do you know who created
9 this chart?

10 A. Bo Bogardus.

11 Q. Did you direct Mr. Bogardus to create
12 this chart?

13 A. I think it was at the request of the
14 NLRB.

15 Q. So you believe that the NLRB talked to
16 Mr. Bogardus directly?

17 A. I don't know the answer to that.

18 Q. All right. But with respect to your
19 actions and your knowledge, did you direct him
20 to create this chart?

21 A. Not that I recall.

22 Q. Okay. Do you know when this chart was
23 created?

24 A. I do not.

25 Q. Do you know what methodology was used

1 to create this chart?

2 A. I do.

3 Q. Okay. And can you explain why that
4 methodology in the second column loss due to
5 returned equipment only has round numbers?

6 A. No.

7 Q. Okay. And what about with respect to
8 the loss due to 139 threats to customers, can
9 you explain why that customer only has round
10 numbers?

11 A. The formula in excess, I don't know.

12 Q. Do you know that formula?

13 A. I don't.

14 Q. Do you know how the loss due to 139
15 threats to customers was calculated?

16 A. From the influence from the Local 139.

17 Q. But do you know how that influence was
18 translated into the numbers on this chart?

19 MS. HILL: I am going to object to this
20 line of questioning. I think the witness made
21 it very clear that Mr. Bogardus created this
22 document. Perhaps to speed things along, sir.

23 JUDGE ROSAS: Well, if you don't know,
24 you don't know.

25 MS. HILL: Okay. Thank you, sir. So

1 what's the --

2 BY MR. WIESE:

3 Q. The question is: Do you know how the
4 numbers in the chart below the column loss due
5 to 139's threats to customers do you know how
6 those numbers were derived from the threats?

7 A. Well, those numbers in that column
8 appear ton the total or the aggregate from the
9 prior two columns that's how that number was
10 derived. So 362,670 plus 314.

11 Q. Is 787,000?

12 A. I guess not.

13 Q. Okay. To your knowledge, was this
14 chart relied on in any way in transitioning the
15 Franksville facility to a small equipment
16 facility?

17 A. I don't know.

18 Q. Did you rely on it in any way?

19 A. I did not.

20 Q. I'd like to direct your attention to
21 General Counsel Exhibit 29. Do you recognize
22 this document?

23 A. Yes.

24 Q. Did you create this document?

25 A. I did not.

1 Q. Do you know who created it?

2 A. Bo Bogardus.

3 Q. Do you know when Mr. Bogardus created
4 the document?

5 A. I do not.

6 Q. And what does this document show?

7 A. Estimated loss rental.

8 MR. WIESE: I'll offer General Counsel
9 Exhibit 29.

10 MS. HILL: No objection, sir.

11 JUDGE ROSAS: General Counsel's 29 is
12 received.

13 (GCX 29 received.)

14 BY MR. WIESE:

15 Q. Do you have any idea of what period of
16 time these estimated losses and forecast losses
17 are over?

18 A. I don't.

19 Q. Is this a document that Sunbelt keeps
20 in the regular course of its business?

21 A. Not that I'm aware of.

22 Q. Can you explain the difference between
23 the EST dollars lost column and the forecast
24 lost dollars column?

25 A. Yeah. Estimated dollars lost are from

1 the equipment being called offline at that time,
2 at that moment in time and the forecasted lost
3 is the multiple from when it was called off to
4 the expected length of rental.

5 Q. Can you explain why all the numbers in
6 this chart are round numbers?

7 A. I cannot.

8 Q. And if you add up all the estimated
9 dollars lost in this chart, what do you get to
10 in that column?

11 A. 66,000 roughly.

12 Q. Okay. Right. And if you add up the
13 forecast dollars lost, approximately what do you
14 get to that that column?

15 A. 355,000.

16 Q. You'd agree with me that \$66,000 is
17 quite a bit less than a million dollars; is that
18 correct?

19 A. Sorry. 455,000.

20 Q. Okay. With respect to the estimated
21 loss column you'd agree with me that 66,000 is
22 significantly less than a million dollars; is
23 that right?

24 A. Yes.

25 Q. Okay. And even \$300,000, there is a

1 significant difference between that number and a
2 million dollars; isn't that right?

3 A. 300,000 to a million, yes. Yes.

4 Q. I think we'd all agree with that. I am
5 going to direct your attention now to General
6 Counsel Exhibit 30. Mr. Mayfield, do you
7 recognize this document?

8 A. Yes.

9 Q. Okay. And this is the consolidated
10 income statement for the Franksville facility,
11 correct?

12 A. Yes.

13 Q. And this document shows the money
14 coming into the Franksville facility, correct?

15 A. Yes.

16 Q. Okay. It doesn't show the expenses for
17 that facility, does it?

18 A. Correct.

19 MR. WIESE: Okay. I'll offer General
20 Counsel Exhibit 30.

21 MS. HILL: No objection, sir.

22 JUDGE ROSAS: General Counsel's 30 is
23 received.

24 (GCX 30 received.)
25

1 BY MR. WIESE:

2 Q. So this is the -- this is a document
3 that you did rely on in making the decision to
4 transition Franksville to a will-call facility,
5 small equipment facility?

6 A. This specific document, no.

7 Q. Okay. Did you rely on any consolidated
8 income statement to making that decision?

9 A. Yes.

10 Q. Okay. So, and I understand that this
11 goes past the date of August of 2019, but did
12 you rely on a document similar to this through
13 August of 2019 in making that decision?

14 A. Yes.

15 Q. All right. So I want to go through the
16 items on the left-hand side of the document
17 below revenue, okay? Okay.

18 A. Okay.

19 Q. So rental revenue, what does that
20 display?

21 A. What the customer was invoiced for.

22 Q. And then rerental income, what does
23 that represent?

24 A. That's if we have to source a piece of
25 equipment from a third party.

1 Q. And transportation?

2 A. What we would charge for delivery and
3 pick-up.

4 Q. And the transportation surcharge?

5 A. That's a percentage of the
6 transportation.

7 Q. Is there a reason that that's broken
8 up?

9 A. It's a surcharge based on what we
10 charge for delivering and pick up. It's an
11 additional charge.

12 Q. And then environmental?

13 A. It's what we charge for environmental
14 use of the equipment.

15 Q. Can you explain any more, like when you
16 say environmental use?

17 A. Sure. Whether does it accumulate from
18 the waste when you wash a piece of equipment or
19 the disposal of oil, things of that nature.

20 Q. And the rental protection plan?

21 A. Yes. It's what covers the customer in
22 the event of there being an incident.

23 Q. And then fuel?

24 A. What's consumed at the time of rental
25 with the fuel.

1 Q. And what about E&D labor?

2 A. Erection and dismantling.

3 Q. So how does that work out in practice?

4 A. It doesn't for these locations. That's
5 for scaffolding.

6 Q. Okay. Thank you. And then below that,
7 the total rental number so that is the sum of
8 all of those items that we just discussed,
9 correct?

10 A. Correct.

11 Q. Okay. And if we go down to the second
12 -- and so the numbers in the first row of this
13 chart below May 2018, it says actual; June 2018
14 actual, do you see all of that?

15 A. Yes.

16 Q. So those represent that's the actual
17 revenue coming into the Franksville facility?

18 A. Yes.

19 Q. And then the column, or excuse me, the
20 row below that has a budget, do you see that?

21 A. Yes.

22 Q. Okay. And so the budget that's
23 indicated there, that's the -- is that the
24 projected numbers then for the facility in a
25 given month?

1 A. Not projected, budgeted.

2 Q. Okay. And are you the one who creates
3 those budgets?

4 A. No.

5 Q. Who does create those budgets?

6 A. The profit center manager. The PCM.

7 Q. Do you provide direction to PCMs on how
8 to create those budgets?

9 A. That direction would come from the
10 district managers.

11 Q. And do you provide direction to
12 district managers on how to direct their PCMs on
13 how to create budgets?

14 A. Not to direct their PCMs. For their
15 districts, for their district roll out. They
16 have multiple profit centers in the district.

17 Q. And so your role in this budgeting
18 process would be to monitor the budgets of the
19 district managers as opposed to the budgets of
20 the specific profit centers?

21 A. Correct.

22 Q. What is Sunbelt's fiscal year?

23 A. May 1st through the end of April.

24 Q. When are these budgets finalized? So
25 for the fiscal year 2020, would that be from

1 March of 2019 to, or excuse me, from May 1st of
2 2019 to April 30th of 2020; is that an accurate
3 characterization?

4 A. Yes.

5 Q. So for the budget for the fiscal year
6 2020, when is that budget created?

7 A. That would have been created between
8 February and March.

9 Q. Of 2019?

10 A. Correct.

11 Q. And then the budget numbers for the
12 year 2019, or excuse me, for the fiscal year
13 2020, those would be starting in May of 2019 on
14 this chart, correct?

15 A. Correct.

16 Q. So the budgeted number for May of 2019
17 the total rental revenue for that month is
18 \$750,914; is that accurate?

19 A. Correct.

20 Q. The actual revenue in May of 2018 was
21 only and, again, I am going to be jumping around
22 a little bit so let me know if you get lost at
23 all, but the actual revenue for May of 2018 was
24 only \$576,000; is that correct?

25 A. For total rental?

1 Q. Yes.

2 A. Well, from May '19 would have been
3 49,501.

4 Q. Yeah, but I am talking back to May
5 of 2018.

6 A. So May of 2018, 576,268.

7 Q. Okay. Can you explain why the budget
8 for May of 2019 is 50 percent -- it appears to
9 be a large percentage higher than the actual
10 revenue for May of 2018?

11 A. Yeah. That was the influence of on the
12 market for the local trades not to use us.

13 Q. And were the trades bannered in May
14 of 2018?

15 A. The local was bannered in the street.

16 Q. Are you certain of that?

17 A. In May of 2019?

18 Q. I'm talking about -- sorry. I know we
19 are jumping around, so I am comparing the
20 May 2018 to the budget in May of 2019.

21 A. Okay.

22 Q. Okay. And so is it your testimony that
23 the -- that the union's campaign against Sunbelt
24 was occurring in May of 2018?

25 A. Can you ask that again?

1 Q. To your knowledge, was the union's
2 campaign against Sunbelt was that active in May
3 of 2018, 2018?

4 A. No.

5 Q. Okay. That campaign didn't begin until
6 2019, correct?

7 A. Yes.

8 Q. So, again, can you explain why the
9 budget numbers for May of 2019 are so much
10 higher than the actual numbers for May of 2018?

11 A. That was the expectations. The market
12 was growing.

13 Q. Do Sunbelt facilities always budget
14 such large year over year increases in your
15 experience?

16 A. It didn't seem unusual. We did
17 \$745,000 in August of 2018.

18 Q. So 745,000 -- where are you deriving
19 that number from?

20 A. 744,910 in August 2018 was the budget.

21 Q. Was the budget. Correct. And then the
22 actual was only 658,290; is that right?

23 A. Uh-huh.

24 Q. And as you testify today, can you
25 explain how the budget numbers for fiscal year

1 2020 were created for Profit Center 776 in
2 Franksville?

3 A. Yeah. Budgets would be derived by
4 taking the amount of cap ex that was expected as
5 well as the market influence of growth and then
6 coming up with an expected rental achievement.

7 Q. What is cap ex? I am not familiar with
8 that term?

9 A. Capital expenditures.

10 Q. Yeah. Okay. Thank you. So the
11 bargaining unit employees as we were discussed
12 were laid off in August of 2019; is that
13 correct?

14 A. Yes.

15 Q. And I want to look at -- I want to
16 compare the actual numbers at the top of the
17 column here. So if you look at the total rental
18 for June of 2018, that's \$565,000 approximately,
19 correct?

20 A. Yes.

21 Q. Okay. And then if you compare that to
22 June of 2019, the actual revenue was \$586,684;
23 is that correct?

24 A. Yes.

25 Q. And you'd agree with me that the

1 June 2019 number is greater than the June
2 of 2018 number, correct?

3 A. Yes.

4 Q. And the same is true if you compare the
5 July 2018 number to the July 2019 number; isn't
6 this accurate?

7 A. Yes.

8 Q. Those are the months leading up to the
9 time when you made the decision to terminate the
10 two bargaining unit employees, correct?

11 A. Yes.

12 Q. And at the time in June of 2019, there
13 were actually less bargaining unit employees
14 employed at the Franksville facility than there
15 were in June of 2018; is that correct?

16 A. Yes.

17 Q. And this chart doesn't show labor costs
18 in any way for Sunbelt, does it?

19 A. No.

20 Q. So the Franksville -- You can set that
21 chart aside, Mr. Mayfield. So the Franksville
22 facility, do you recall when that was opened?

23 A. March 2014.

24 Q. Do you know why the Franksville
25 facility was opened?

1 A. The Franksville/Racine market was
2 robust. It was a healthy construction market.

3 Q. And the Franksville location, that's
4 located to the south of Milwaukee; is that
5 correct?

6 A. Yes.

7 Q. And there is several significant
8 construction projects going on south of
9 Milwaukee; isn't that correct?

10 A. Yes.

11 Q. And notable among those would be a
12 project called Foxconn. Are you familiar with
13 that project?

14 A. Yeah. I think we are.

15 Q. It's a multi-billion dollar project,
16 right?

17 A. Something like that. Small dollars.

18 Q. And that was a project that was being
19 serviced at least for a period of time by the
20 Franksville facility, correct?

21 A. I don't know.

22 Q. Okay. You aren't sure of that?

23 A. Yeah.

24 Q. Is there a document that would refresh
25 your recollection? Would your affidavit help

1 you to remember if Franksville was servicing the
2 Foxconn facility?

3 A. There was an intention. I don't know
4 if they were specifically servicing the Foxconn.

5 Q. So you are not sure of whether they
6 were specifically servicing Foxconn?

7 A. I don't recall like there was open
8 contracts or who they were to.

9 Q. Where is the closest profit center to
10 the Franksville facility?

11 A. Milwaukee -- Waukesha.

12 Q. Waukesha. Okay. Thank you. And do
13 you know where Waukesha is located?

14 A. In Waukesha.

15 Q. And where is Waukesha -- Where is
16 Waukesha located relative to the City of
17 Milwaukee?

18 A. Within minutes.

19 Q. Which direction?

20 A. I guess it would be west.

21 Q. You'd agree with me that it's further
22 from Waukesha to Foxconn than it is from
23 Franksville to Foxconn, correct?

24 A. Yes.

25 Q. And there is other projects that are

1 serviced by Sunbelt that exist to the south of
2 Milwaukee, correct?

3 A. Yes.

4 Q. And so when equipment is -- so
5 customers who want large equipment who are south
6 of Milwaukee, their equipment has to travel
7 farther than it would if it were delivered from
8 the Franksville facility, correct?

9 A. Yes.

10 Q. Who incurs that cost?

11 A. The PC, the profit center.

12 Q. So the Waukesha profit center would
13 incur the increased cost of the transportation?

14 A. Yes.

15 Q. Okay. That doesn't get translated to
16 the customers?

17 A. No.

18 Q. How many Sunbelt facilities are there
19 in Wisconsin?

20 A. Five -- six. Six.

21 Q. Of the Franksville facility -- excuse
22 me. How many employees approximately are there
23 total in Wisconsin of Sunbelt?

24 MS. HILL: Objection. Form.

25 JUDGE ROSAS: Repeat the question.

1 BY MR. WIESE:

2 Q. Approximately how many total employees
3 are there in Wisconsin from Sunbelt?

4 JUDGE ROSAS: Counsel?

5 MS. HILL: Objection. Form of the
6 question.

7 JUDGE ROSAS: How many employees?

8 MS. HILL: Correct, because time frame.
9 You know, he is bouncing around on time and
10 everything else.

11 JUDGE ROSAS: Okay. At what time?

12 BY MR. WIESE:

13 Q. In August of 2019, approximately how
14 many Sunbelt employees were there in Wisconsin?

15 A. 70.

16 Q. And out of the Franksville facilities
17 at that time, again August of 2019, the
18 Franksville facility was the only facility with
19 union employees in Wisconsin; is that correct?

20 A. Yes.

21 Q. Do you know what Local 139's
22 jurisdiction is, the union's jurisdiction?

23 A. I do not.

24 Q. Okay. And the layoffs that took place
25 in August of 2019, those were limited to the

1 Franksville facility, correct?

2 A. Yes.

3 Q. And at the Franksville facility those
4 two layoffs were limited to the two bargaining
5 unit employees; is that correct?

6 A. Yes.

7 Q. At that time -- Strike that.

8 Did you discuss the union's bannering
9 activity with the union?

10 A. Yes.

11 Q. Did the union ever tell you during any
12 of those conversations that terminating their
13 bargaining unit would cause the bannering to
14 stop?

15 A. No.

16 Q. Does that make sense to you that
17 terminating the two union represented employees
18 would alleviate the bannering?

19 A. No.

20 Q. Doesn't it seem like that would cause
21 the union to be even more upset at Sunbelt?

22 A. I don't know.

23 Q. You don't know whether terminating
24 their only two represented employees would upset
25 the union?

1 A. I don't know what it would do to them.
2 That would be up to them.

3 Q. So, Mr. Mayfield, if you go back to the
4 stack of documents that I handed you at the very
5 beginning of your examination --

6 A. Okay.

7 Q. -- go to General Counsel Exhibit 59.
8 Do you recognize this document?

9 A. I recognize the names and title and
10 rate of pay.

11 Q. And does that information the names,
12 titles and rate of pay, does that appear to be
13 accurate?

14 A. Yes.

15 Q. Do you know how much mechanics at
16 Sunbelt make in a given year?

17 A. There is a range.

18 Q. Okay. But if you had to average it,
19 how much would you say it is?

20 A. Again, it would be a range. I don't --

21 Q. So with respect --

22 MR. WIESE: Well, let me offer General
23 Counsel Exhibit 59.

24 MS. HILL: No objection.

25 JUDGE ROSAS: General Counsel's 59 is

1 received.

2 (GCX 59 received.)

3 BY MR. WIESE:

4 Q. So this shows the wage rate of Allan
5 Romanowski, correct?

6 A. Yes.

7 Q. And the wage rate for Mario Rivera and
8 Kyle McKellips as well?

9 A. Yes.

10 Q. So how much money did you think it
11 would save Sunbelt laying off Mr. McKellips and
12 Mr. Romanowski?

13 A. Can you repeat the question?

14 Q. How much money would it save Sunbelt
15 laying off Mr. McKellips and Mr. Romanowski?

16 A. It was more about aligning the store
17 with a decline in revenue.

18 MR. WIESE: That's a nonresponsive
19 answer, your Honor.

20 JUDGE ROSAS: Repeat the question.

21 MR. WIESE: I asked him how much money
22 would laying off Mr. McKellips and Mr.
23 Romanowski save Sunbelt.

24 JUDGE ROSAS: If you know.

25 THE WITNESS: I'd be speculating.

1 BY MR. WIESE:

2 Q. So that wasn't something that you
3 calculated before laying off the employees?

4 A. Yeah. It was more about aligning the
5 location with what it had become.

6 Q. I apologize again for jumping around.

7 JUDGE ROSAS: Let's take five minutes.

8 (Whereupon, a short recess was
9 taken.)

10 JUDGE ROSAS: Back on the record.

11 BY MR. WIESE:

12 Q. Mr. Mayfield, I'd like to direct your
13 attention to General Counsel Exhibit 47. Do you
14 recognize this document at all?

15 A. Yes.

16 Q. It's a cover sheet to a proposed
17 Collective Bargaining Agreement between Sunbelt
18 and Local 139, correct?

19 A. Yes.

20 Q. For the Franksville facility?

21 A. Yes.

22 Q. Do you recognize the handwriting in the
23 upper right-hand corner of that document?

24 A. I do not.

25 Q. Okay. That's not your handwriting?

1 A. It's not.

2 Q. Okay. You don't recognize whose
3 handwriting that is based on your experience at
4 the table?

5 A. I don't.

6 Q. Okay. I'll retrieve that document
7 then.

8 JUDGE ROSAS: Do you want to -- you are
9 not going do try to put it in through somebody
10 else?

11 MS. HILL: You took my copy, too.

12 MR. WIESE: I'll hand it back when I am
13 entering it.

14 BY MR. WIESE:

15 Q. Mr. Mayfield, I'd like to direct your
16 attention to General Counsel Exhibit 55. Do you
17 have that document?

18 A. I do.

19 Q. Do you recognize this?

20 A. Yes.

21 Q. So Page 1 of this document or Pages 1
22 and 2 of this document would be position
23 descriptions for the driver at Sunbelt; is that
24 correct?

25 A. Yes.

1 Q. And then pages -- Page 3 of the
2 document would be a position description for a
3 Mechanic 2, correct?

4 A. Yes.

5 Q. Okay. And Page 3 would be the position
6 description for a Mechanic 1, correct?

7 A. Yes.

8 Q. And those would be the position
9 descriptions for the bargaining unit at the
10 Franksville facility?

11 A. Yes.

12 Q. I'd like to direct your attention to
13 General Counsel Exhibit 56.

14 JUDGE ROSAS: Counsel, are you offering
15 that document?

16 MR. WIESE: Oh, thank you, your Honor.
17 I'll offer General Counsel Exhibit 55.

18 JUDGE ROSAS: Any objection?

19 MS. HILL: No objection.

20 JUDGE ROSAS: General Counsel's 55 is
21 received.

22 (GCX 55 received.)

23 BY MR. WIESE:

24 Q. Directing your attention to General
25 Counsel Exhibit 56. Mr. Mayfield, this appears

1 to be an E-mail chain; is that correct?

2 A. Yes.

3 Q. And it originates from an individual
4 named Katie Torgerson. Do you know who she is?

5 A. Yes.

6 Q. Who is Ms. Torgerson?

7 A. Former profit center manager, PCM.

8 Q. And going up the E-mail chain to the
9 second to the first page there, there is an
10 E-mail from Bo Bogardus to yourself. Do you see
11 that?

12 A. I do.

13 Q. And then above that, there is an E-mail
14 chain from Vicky Gibson to Cheryl Black. Do you
15 see that?

16 A. Yes.

17 Q. And who is Ms. Gibson?

18 A. The director of HR for the northeast
19 territory.

20 Q. Is Ms. Gibson Rebel Strohmeier's boss?

21 A. Yes.

22 Q. And who is Cheryl Black?

23 A. Cheryl is the senior vice president of
24 HR.

25 Q. Is Ms. Black Ms. Gibson's supervisor?

1 A. Yes.

2 MR. WIESE: I'll offer General Counsel
3 Exhibit 56.

4 MS. HILL: No objection, your Honor.

5 JUDGE ROSAS: General Counsel 56 is
6 received.

7 (GCX 56 received.)

8 BY MR. WIESE:

9 Q. So this is an E-mail chain about the
10 Operating Engineers Local 139, correct?

11 A. Yes.

12 Q. And the -- this is our first in
13 Wisconsin. Do you know what that's in reference
14 to?

15 A. I don't.

16 Q. Okay. Were there any other 139
17 facilities in Wisconsin?

18 A. No.

19 Q. Represented facilities at that time?

20 A. No.

21 Q. Okay. If you go to General Counsel
22 Exhibit 58. Do you recognize this document?

23 A. Yes.

24 Q. This was a document that was handed out
25 by the union to the employer during collective

1 bargaining negotiations; is that right?

2 A. Yes.

3 Q. And it was handed out at the June 2019
4 negotiations. Does that sound correct?

5 A. Yes.

6 Q. If you go to Page 3 of the document, do
7 you recognize the handwriting in this document?

8 A. I do not.

9 Q. That's not your handwriting?

10 A. It is not.

11 Q. Do you know whose handwriting that is?

12 A. I do not.

13 Q. Okay. Do you recognize the initials
14 or -- the information below the date that's
15 handwritten for example next to Section 1.1, do
16 you see what I am talking about?

17 A. I do.

18 Q. Okay. Do those appear to be initials?

19 A. I don't know.

20 Q. You don't -- Okay. Do you recall
21 discussing this document on July 2nd of 2019?

22 A. Yes.

23 Q. Okay. Did you take any notes of that
24 discussion?

25 A. Yes.

1 Q. And those notes aren't reflected in
2 this document here, are they?

3 A. You are asking me if they are on this
4 document?

5 Q. Yes.

6 A. No.

7 MR. WIESE: Okay. I'll offer General
8 Counsel Exhibit 58.

9 MS. HILL: No objections.

10 JUDGE ROSAS: General Counsel's 58 is
11 received.

12 (GCX 58 received.)

13 BY MR. WIESE:

14 Q. Mr. Mayfield, are you familiar with how
15 shops work at individual Franksville profit
16 centers? Do you spend any time in a Franksville
17 profit center, or excuse me, a Sunbelt profit
18 center shop?

19 A. Yes.

20 Q. Are members of the public allowed to
21 wander through Franksville, or excuse me, the
22 Sunbelt shops?

23 A. Can you repeat the question?

24 Q. Are members of the public allowed to
25 wander through shops at Franksville facilities?

1 A. No.

2 Q. Are they allowed to work on equipment
3 located in shopping at Franksville, or excuse
4 me, again, it's Sunbelt facilities?

5 A. Can you ask the question again?

6 Q. Yes. I apologize. I am getting
7 confused.

8 Are members of the public allowed to
9 work on equipment in shops at Sunbelt
10 facilities?

11 A. No.

12 MR. WIESE: Nothing further.

13 JUDGE ROSAS: Charging Party, anything?

14 MR. RYAN: If I could just have a
15 couple minutes to review.

16 JUDGE ROSAS: Sure. Off the record.

17 (Whereupon, a discussion was had
18 off the record.)

19 JUDGE ROSAS: We are on. Go ahead.

20 CROSS EXAMINATION

21 BY MS. HILL:

22 Q. Mr. Mayfield, just a few questions
23 because you are going to be called in Sunbelt's
24 case in chief. You were questioned about the
25 Franksville location being reorganized to be a

1 certain type of facility. Some of the
2 questions, subsequent questions, to your answer
3 involve just small tool equipment for that
4 facility. I want to make sure that the record
5 is clear the Franksville location was
6 reorganized to reflect what type of equipment?

7 A. Equipment that could be will-called or
8 equipment that could be picked up, not requiring
9 a CDL license so the Class C would be
10 10,000 pounds or less.

11 Q. So it would be small equipment and
12 small tool?

13 A. Yes.

14 Q. You mentioned you were questioned about
15 other will-call locations in your region?

16 A. Uh-huh.

17 Q. Do you have any other -- Could you
18 identify where the other will-call locations are
19 in your region?

20 A. Yeah. We have locations that are high
21 in will-call that type of small tool business.
22 We have a couple in Michigan, do high volume
23 high transactions, a lot of walk-in customers is
24 just one of the examples.

25 Q. You just mentioned the term walk-in

1 customers. How did the Franksville location
2 compare for walk-in customers versus let's say
3 the Waukesha profit center?

4 A. Uh-huh. Yeah. So Franksville is has
5 the highest volume of walk-in customers of any
6 of other location than we have in the State of
7 Wisconsin.

8 Q. You were asked questions about
9 repairing the equipment the small equipment, the
10 small tool equipment located at Franksville and
11 you were also questioned about the negotiations
12 for the impact of the reorganization.

13 During the negotiations regarding the
14 impact of the reorganization, did the union
15 request to negotiate who would repair the
16 remaining small equipment, small tool?

17 A. Can you repeat that last part, please?

18 Q. Okay. Did the union, the 139, during
19 the negotiations regarding the impact of the
20 reorganization request or ask any questions
21 about how the small equipment, small tools at
22 the Franksville location would be repaired?

23 A. Not that I recall.

24 MS. HILL: No further questions, your
25 Honor.

1 JUDGE ROSAS: Any redirect?

2 MR. WIESE: Briefly, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. WIESE:

5 Q. You mentioned that there are I believe
6 if I heard correctly there is a few will-call
7 facilities in Michigan; is that correct?

8 A. Yes.

9 Q. Okay. Do those facilities employ
10 mechanics?

11 A. They do.

12 MR. WIESE: Nothing further.

13 JUDGE ROSAS: Charging Party, anything?

14 CROSS EXAMINATION

15 BY MR. RYAN:

16 Q. You mentioned that Franksville had the
17 highest volume of walk-ins for Wisconsin,
18 Mr. Mayfield?

19 A. Yes.

20 Q. Can you give me some context?

21 A. Yeah. The amount of customers that
22 walk in for that small tool type traffic, they
23 have a high volume, high frequency of that type
24 of customers especially with how fast that
25 market has grown over the last few years, so a

1 lot of customers come in and out, picking things
2 up themselves. They will come in with trailers.
3 They will come in with pickup trucks, even had
4 some come in with their own rigs, their own
5 tractors and trailers.

6 Q. But as far as the volume in contrast to
7 say Waukesha, can you give me an idea of how
8 much more Franksville is to Waukesha?

9 A. Probably 200 percentish. Around
10 200 percent.

11 Q. Are there any documents that would kind
12 of crystalize the difference between the
13 facilities in Wisconsin?

14 A. Yeah. We can tell what equipment is
15 not delivered.

16 Q. Do you know if any such documents were
17 produced to the region in this case?

18 A. No.

19 Q. No, you don't know or no, there
20 weren't?

21 A. Not that I'm aware of.

22 MR. RYAN: Nothing further. Thank you,
23 your Honor.

24 JUDGE ROSAS: Any follow up?

25 MS. HILL: No, sir.

1 JUDGE ROSAS: Thank you, sir. You are
2 excused. Please do not discuss your testimony
3 with anyone until you are advised otherwise by
4 counsel.

5 MS. HILL: Now, you have two more
6 witnesses here. Do you want to keep him in case
7 you want any kind of rebuttal?

8 MR. WIESE: Not today.

9 JUDGE ROSAS: Off the record.

10 (Whereupon, a discussion was had
11 off the record.)

12 JUDGE ROSAS: Next witness?

13 MR. WIESE: Your Honor, I need probably
14 five minutes to get my documents together.

15 JUDGE ROSAS: Okay. Off the record.

16 (Whereupon, a short recess was
17 taken.)

18 JUDGE ROSAS: Back on the record. Next
19 witness.

20 MR. WIESE: Thank you, your Honor. At
21 this time counsel for the General Counsel calls
22 Bo Bogardus to the stand.

23 JUDGE ROSAS: Sir, please raise your
24 right hand.

25 (Witness sworn.)

1 JUDGE ROSAS: All right. Please have a
2 seat. State and spell your name and provide us
3 with an address.

4 THE WITNESS: My given name is Robert
5 John Bogardus, the III. R-O-B-E-R-T, J-O-H-N,
6 B-O-G-A-R-D-U-S.

7 JUDGE ROSAS: And an address.

8 THE WITNESS: 309 Wilmont Drive,
9 Waukesha, Wisconsin.

10 ROBERT J. BOGARDUS, III,
11 after being first duly sworn, deposeth and saith
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. WIESE:

15 Q. Mr. Bogardus, do you work for Sunbelt
16 Rentals?

17 A. Yes, sir.

18 Q. In what capacity?

19 A. I am market leader for Wisconsin's
20 Climate Control Group.

21 Q. And prior to holding the position as
22 market leader for the Climate Control Group, did
23 you hold any other positions with Sunbelt?

24 A. Yes, sir.

25 Q. What positions what position did you

1 hold immediately prior to your current position?

2 A. District manager for the general tool
3 locations in Wisconsin.

4 Q. How long were you in that position for?

5 A. 24 or 27 months.

6 Q. Can you identify which months those
7 were?

8 A. I accepted the role in February of '17
9 and started living in the state and was
10 commuting back and forth prior to June, but I
11 started living in the state in June of '17.

12 Q. And then how long were you in that
13 position for? When did you stop being in that
14 position?

15 A. July the 8th of this year.

16 Q. What were your job duties in that
17 position?

18 A. As a district manager?

19 Q. Yes.

20 A. To oversee the administrative and sales
21 operations for the six GT locations in the state
22 of Wisconsin.

23 Q. When you say GT, what does that stand
24 for?

25 A. General tool.

1 Q. Do you know what those locations are?

2 A. Do you want the PC numbers or cities?

3 Q. The cities would be more helpful.

4 A. Racine, Waukesha, Fond du Lac, Green
5 Bay, Wausau and Sun Prairie, which is a suburb
6 of Madison.

7 Q. The Racine location is that sometimes
8 referred to as the Franksville location?

9 A. Yes, sir.

10 Q. Who reports or who reported to you when
11 you were in that position?

12 A. There were two. In the beginning it
13 was Katie Torgerson. Katie left the company in
14 March of '17 -- March of '18, sorry, March
15 of '18 and then Bryan Anderson assumed that role
16 in it was either late June or early July of '17.

17 Q. Of '17 or '18?

18 A. I'm sorry of '18. Of '18. Sorry.

19 Q. Do you know why Ms. Torgerson left the
20 company? Strike that.

21 How did her employment end?

22 A. She was released from the company.

23 Q. Did you make that decision?

24 A. In conjunction with a few others, yes.

25 Q. Who were the others?

1 A. Jason Mayfield and Rebel Strohmeier.

2 Q. Do you have or did you have
3 disciplinary authority as a district manager?

4 A. Yes, sir.

5 Q. Over who?

6 A. Mainly the PCMs.

7 MR. WIESE: Your Honor, I request to
8 question this witness under 611(c) of the
9 Federal Rules of Evidence.

10 JUDGE ROSAS: Granted.

11 BY MR. WIESE:

12 Q. I'd like to direct your attention to
13 General Counsel Exhibit 27 which is going to be
14 -- it should be separated out in that stack of
15 documents. It looks like a chart of hours
16 worked.

17 A. Okay.

18 Q. There should be a stack of three
19 document up there?

20 A. Allan Romanowski at the beginning at
21 the top?

22 Q. Yes. That's correct.

23 A. Okay.

24 Q. Are you familiar with this document?

25 A. This is the first time I have seen it.

1 Q. Okay. Go to the next document then,
2 General Counsel Exhibit 28.

3 A. Yes, sir.

4 Q. Are you familiar with this document?

5 A. Yes, sir.

6 Q. Did you create it?

7 A. Yes, I did.

8 Q. When did you create this document?

9 A. This had to be Mayish of this year.
10 May of '19 give or take.

11 Q. So I want to break down the columns in
12 this document, so lost due to returned
13 equipment, rental dollar sign only, what does
14 that column represent?

15 A. That is the column for each one of the
16 PCs in the state that were impacted by the
17 bannerings and picketing and threats made to our
18 customers by the gentleman from Local 139.

19 Q. And are these -- are the numbers in
20 this column are these numbers precise numbers?

21 A. They are within a point or two. I
22 rounded up to make it a little simpler for us to
23 just review it.

24 Q. You round it up to the nearest thousand
25 dollars it looks like for Profit Centers 365 and

1 366; is that accurate?

2 A. Same with 1776 and 1006 as well.

3 Q. Well, for Profit Center 776, it looks
4 like you rounded up to the nearest hundred
5 thousand, does that --

6 A. No.

7 Q. Okay. It just happened to end on a
8 round number?

9 A. Yes.

10 Q. Okay. And then the column next to that
11 the total rental revenue lost due to equipment
12 returned by direct 139 inference. What's that?

13 A. I did that, yes.

14 Q. Okay.

15 A. That is the inclusion of the ancillary
16 charges that we charge on every contract and
17 what I did was took the gross average of what
18 was there for ease of anything to mark it up to
19 what those amounts typically would have been.

20 Q. And so those charges, those are charges
21 that are applied to the Sunbelt facilities or to
22 the customers?

23 A. Those would have been on the customers'
24 invoices, sir.

25 Q. Okay. So the invoice between the loss

1 due to equipment and total revenue loss, it's
2 that cost that's charged to the customer,
3 correct?

4 A. Yes, sir.

5 Q. Okay. If you go over to the next
6 column, loss due to 139 threats to customers,
7 how did you calculate that?

8 A. Those were the commitments that we had
9 from the customers prior to the bannering
10 picketing of 139 and the job sites threatening
11 the customers to picket their jobs until they
12 got our equipment off site.

13 Q. And did you contact each one of those
14 customers for each of those job sites to
15 determine that the union's activity was the
16 reason they were cancelling with Sunbelt?

17 A. I did not personally contact each one.
18 The sales reps where I couldn't get ahold or
19 where they had a better relationship with the
20 customer, I reached out to the sales rep to
21 determine what had been committed verbal prior to
22 the union doing their thing.

23 Q. And everything single loss on here, you
24 received information from the customer or from a
25 sales rep telling you that it was due to

1 Local 139's activity?

2 A. Yes, sir.

3 Q. And the round numbers on this column as
4 well, that's just a -- that was just rounding
5 up?

6 A. Rounding up to the nearest up or down,
7 you know, if it it's five or less, you know, or
8 six or more.

9 Q. Do you have the underlying figures that
10 you relied on in creating this chart anymore?

11 A. That's in a file on my computer I
12 believe.

13 Q. Do you know is that file still in
14 existence?

15 A. I don't know for sure.

16 Q. Do you know where it would be if it
17 were in existence?

18 MS. HILL: Asked and answered.

19 JUDGE ROSAS: I'm sorry. Repeat the
20 question.

21 MR. WIESE: I will move on, your Honor.

22 BY MR. WIESE:

23 Q. Then with the respect to the next
24 column on your chart, Mr. Bogardus, the total
25 rental moneys lost after 139 threatened pickets

1 when Sunbelt equipment is on site?

2 A. It was the same average ancillary
3 percentages I developed for the column, total
4 rental revenue lost, the second column.

5 Q. Okay. And, again, those would be
6 charges assessed to -- the difference would be
7 the charges assessed to the customers?

8 A. Yes, sir.

9 Q. Okay. What are those charges?

10 A. Freight, pick-up and delivery, the
11 environmental fee that we charge for taking care
12 of our environmental issues. I am trying to
13 remember the fourth one off the top of my head.
14 Transportation surcharge goes along with the
15 freight.

16 Q. And then the totals at the end those
17 are just the added up numbers for all three of
18 the -- four of the columns; is that accurate?

19 A. Yes. The total dollars lost and that
20 8.1 is what we believe was a result of lost
21 revenue to Sunbelt as a result of the union's
22 efforts to hurt revenue.

23 Q. And I may have misspoke. It looks like
24 so the total number is the combination of the
25 total revenue lost due to equipment returned

1 plus the total rental dollars lost after
2 threatened pickets, is that --

3 A. Exactly.

4 Q. Okay. Thank you. Is there a reason
5 you didn't put a date on this document?

6 A. No. I was asked to put it together and
7 just put it together. There wasn't any real
8 reason not to put down.

9 Q. Do you recall who put it together?

10 A. I did.

11 Q. Who asked you to put it together?

12 A. Jason.

13 Q. Okay. Do you recall when Jason asked
14 you to put it together?

15 A. The day I started which it was late
16 May, early June if I remember correctly.

17 Q. Of what year?

18 A. This year.

19 Q. If you go on to the next document
20 General Counsel Exhibit 29 which would be
21 hopefully the next one in your stack. Do you
22 recognize this document, Mr. Bogardus?

23 A. Yes, sir.

24 Q. Is this a document that you created?

25 A. I am 90 percent it is, yes.

1 Q. When you say 90 percent, was there
2 other portions of the document that you didn't
3 create?

4 A. Not that I'm aware of, no. I was just
5 -- looking at the numbers and it looks leaks
6 exactly like one I would set up, yes.

7 Q. Is this a document that you create
8 during the normal course of your business?

9 A. No.

10 Q. Do you recall when you created this
11 document?

12 A. It would have been about the same time
13 as the bannering and picketing started.

14 Q. Do you recall when that was?

15 A. Not the exact dates, no, sir.

16 Q. To the best of your recollection today,
17 when do you recall that beginning?

18 A. Spring of this year.

19 Q. Early spring or late spring?

20 A. Probably I would guess more toward the
21 latter as we got busier.

22 Q. So looking back now at General Counsel
23 Exhibit 29, the column customers below that,
24 what do those represent?

25 A. Names of our customers.

1 Q. And then next to that, the project name
2 what does that represent?

3 A. That would be the specific project on
4 which the bannerling and picketing went on and
5 the customer was threatened that if they didn't
6 send our equipment back, there would be
7 additional pickets keeping --

8 MR. RYAN: Can I just raise an
9 objection as to the characterization of
10 picketing an issue here. There was no picketing
11 at these locations in Wisconsin.

12 JUDGE ROSAS: Well, you can probe that
13 on cross.

14 BY MR. WIESE:

15 Q. Mr. Bogardus, did you visit each of
16 these facilities listed on this chart?

17 A. No, sir, I did not.

18 Q. Did you witness what the union was
19 doing at these facilities on this chart?

20 A. I had pictures from Riley, Children's
21 Hospital, Fiserv, and the Fond du Lac Hotel.

22 Q. Which customer is Children's Hospital?
23 I'm sorry.

24 A. Terry Engineering.

25 Q. Oh, thank you. Thank you. The other

1 ones did you have any firsthand knowledge of
2 what was going on at those facilities?

3 A. The information came from our local
4 sales reps covering those sites.

5 Q. Why did you create this document?

6 A. It would have been at the same time it
7 was before the previous document, probably two
8 weeks so in the late spring of this year.

9 Q. Why?

10 A. Why did I create it?

11 Q. Yes. Yes.

12 A. So we could track what the union was
13 doing to us.

14 Q. It's your testimony that General
15 Counsel Exhibit 29 was created about two weeks
16 before General Counsel Exhibit 28?

17 A. Yes, sir.

18 Q. And in General Counsel Exhibit 29, this
19 was your attempt to track all of the losses from
20 the union's activities; is that correct?

21 A. To get as many documented as we could
22 internally to determine the impact.

23 Q. So the purpose of this document was to
24 track all of the losses that you were aware of
25 due to the union's bannered activity?

1 A. Yes, sir.

2 Q. Okay. Let's go over to the dollar
3 figures in this document. So the estimated
4 dollars lost, what methodology did you use to
5 calculate that?

6 A. Those were from the time that was on
7 the original contract out because we put an
8 estimated return date when we enter a contract,
9 so whatever the monthly rate was times the
10 number of given months per unit was what
11 generated that estimated dollars lost.

12 Q. Okay. And is the length of the
13 contract is that a set term or is that something
14 that you are estimating?

15 A. The customer generally gives us an
16 estimation of how long they will have the piece.

17 Q. Okay. Are they free to return it
18 before --

19 A. Yes.

20 Q. -- that date? Okay. And the basis of
21 these estimated dollars lost this is based off
22 of the estimations that Sunbelt received from
23 the customers; is that accurate?

24 A. Yeah. These were units that were on
25 site, came off site, with the estimated

1 timeframes that the customers had shared with
2 it, yes.

3 Q. Okay. So the estimated loss then would
4 be the difference between the money that
5 actually came in from the customer on those job
6 sites versus the amount of time that you
7 estimated that the equipment was scheduled to
8 remain there?

9 A. You are talking about this column,
10 right?

11 Q. I am talking about the estimated
12 dollars lost.

13 A. Yes. Yes.

14 Q. Okay. And with respect to the next
15 column forecast dollars lost, what was your
16 methodology in creating that?

17 A. The additional equipment that we have
18 been told that we were going to be on that site
19 had we not been interfered.

20 Q. Who told you that information from
21 Riley Construction?

22 A. That came from our OSR, our outside
23 sales rep.

24 Q. Outside sales rep, is that a
25 Franksville employee, I'm sorry, a Sunbelt

1 employee?

2 A. Yes.

3 Q. Was there any commitment in writing to
4 support the \$280,000 figure for Riley
5 Construction?

6 A. No, sir, not that I am aware of.

7 Q. And what about with respect to the
8 other figures in this document for forecast lost
9 numbers, is there any written document
10 supporting those numbers?

11 A. No, sir.

12 Q. And for the other projects besides
13 Riley Construction, were those forecast dollar
14 figures calculated in the same way?

15 A. Yes, sir.

16 Q. And with respect to JP Cullen, JH
17 Findorff in both bills, I notice there is no
18 numbers lost or there is no estimated revenue
19 lost; is that correct?

20 A. That is correct.

21 Q. And the same with forecast dollars
22 lost, there is no numbers there; is that
23 correct?

24 A. Correct.

25 Q. I'd like to direct your attention to

1 General Counsel Exhibit 30 now. So this has
2 previously been identified as the consolidated
3 income statement for the Franksville Center?

4 A. Yes, sir.

5 Q. Okay. And you recognize it as such?

6 A. Yes, sir.

7 Q. I'd like to focus on the middle row of
8 this document. The budget items, do you see
9 where I am pointing to there?

10 A. You are talking about the revenue
11 stream for the budgeted revenue stream for the
12 Sun Prairie?

13 Q. Right. Exactly.

14 A. Okay.

15 Q. Are you involved in calculating the
16 budgeted revenue streams for profit centers?

17 A. Yes. Yes, sir. I work with the
18 individual PCM.

19 Q. And what's the process for doing that?

20 A. Well, we look at what the general
21 economy is going to do. What we think we are
22 going to see and put it together in that
23 regards. Wisconsin is I think is common
24 knowledge has been pretty active in growing and
25 we try to put a budget together the best

1 estimation based on the fleet that we have and
2 the fleet that we might buy and that coming year
3 how that will impact our revenues.

4 Q. Okay. And the -- so the fiscal year
5 for Sunbelt runs from May 1st of a given year to
6 April 30th of the following year. Do I have
7 that correct?

8 A. Yes, sir. That is correct.

9 Q. Okay. And so the fiscal year for 2020
10 would be from May 1st of 2019 to April 30th of
11 2020?

12 A. Yes, sir.

13 Q. Okay. So for the budget year for the
14 fiscal -- the budget for the fiscal year 2020,
15 for the Franksville profit center, were you
16 involved in calculating that budget?

17 A. Yes, sir.

18 Q. When did you calculate that budget?

19 A. Budgets were completed in mid to late
20 February of this year, of '19.

21 Q. Are there documents that exist that
22 would describe the process of how you came to
23 that budget with the Franksville center?

24 A. I guess what are you looking for as far
25 as documents again?

1 Q. Well, what did you look at in
2 calculating the budget?

3 A. Well, we started off looking at what
4 the trend is going. We started off looking and
5 we continued to look at what is forecast, you
6 know, by the Dodge -- FW Dodge seems to be the
7 norm that we all use in the business to
8 determine future activity and then, you know,
9 reach out to our sales folks, talk to our
10 customers. Try to develop all the information
11 we can to understand what this year might look
12 like. I'd love to have a crystal ball, but I
13 don't know anybody that's got one.

14 Q. Right.

15 A. And we make our best estimates from
16 there. Try to be relatively conservative but as
17 accurate as possible.

18 Q. What's FW Dodge, I am not familiar with
19 that term.

20 A. FW Dodge is a company that tracks
21 bidding activity, new construction starts,
22 planning statuses, been around for -- I have
23 been in construction for almost 40 years now.
24 So it's been around that long so because I
25 started right when I got out of school.

1 Q. And they provided documents to you to
2 use in calculating the budget?

3 A. No. They just provide estimates of
4 what's going to happen in any given area broken
5 down typically by zip code.

6 Q. Are those documents, or excuse me. Is
7 that information conveyed to you verbally only?

8 A. No. They have got a website. We have
9 got E-mail deliveries that come from Dodge. You
10 can go into their site and pull it up.

11 Q. With respect to calculating the trends.
12 I think that was the first thing that you
13 mentioned. What documents, if any, did you rely
14 on in ascertaining the trends for fiscal year
15 2020?

16 A. They are forecast by county, by zip
17 code.

18 Q. From?

19 A. From FW Dodge.

20 Q. Okay. Any other documents besides FW
21 Dodge?

22 A. No. Not really not as far as that can
23 forecast.

24 Q. And so is it your testimony that in
25 calculating budgets for a given fiscal year, you

1 try to remain fairly conservative in calculating
2 those budgets?

3 A. As conservative as the Fort Mill office
4 will let us be, yes.

5 Q. Is that the same thing that you did
6 when you were calculating the Franksville budget
7 for the fiscal year 2020?

8 A. Actually, I was pushing to be more
9 conservative of Franksville.

10 Q. Who pushed back against that?

11 A. I could probably give you a hundred
12 names.

13 Q. Okay. Let me ask you specifically:
14 Was Mr. Mayfield involved in pushing back on
15 that number?

16 A. Yes.

17 Q. Did Mr. Mayfield review that budget
18 before it was finalized?

19 A. Yes.

20 Q. Do you know what type of a review he
21 conducts?

22 A. Jason and I haven't sat down and done a
23 line item review on a budget in the two years we
24 have been together, no.

25 Q. Okay. So to answer my question, you

1 aren't sure then what type of a review he
2 conducts of the budgets?

3 A. You'd honestly have to ask Jason how he
4 looks at it. We went back and forth a bit, but,
5 you know, we didn't talk a whole lot about the
6 logic. We just talked about the numbers needed
7 to look like.

8 Q. Did Mr. Mayfield consult with you at
9 all regarding the decision to terminate or lay
10 off the union represented employees at the
11 Franksville facility?

12 A. Yes.

13 Q. When did he do that?

14 A. I am trying to think of the best way to
15 answer that because at the very beginning of
16 this when the folks from 139 showed up, I was
17 ready to close the store so we had a
18 conversation about closing the store at that
19 point.

20 Q. And you were ready to close the store
21 because the union was coming in?

22 A. Given what we were seeing, yes.

23 Q. Who did you have that conversation
24 with?

25 A. Jason and I had that conversation a

1 week or so after the election.

2 MR. WIESE: Your Honor, I do have a
3 couple of documents that I want to introduce
4 through this witness. So I will try to hand
5 them out as quickly as I can.

6 BY MR. WIESE:

7 Q. Mr. Bogardus, I'd like to start with
8 the document that's marked in the lower
9 right-hand corner General Counsel Exhibit 26.

10 A. Yes, sir.

11 Q. Do you recognize this document?

12 A. Yes, sir.

13 Q. This is an E-mail chain that you
14 started on July 25, 2018; is that correct?

15 A. Yes, sir.

16 Q. And it's with regard to the scheduled
17 collective bargaining negotiations with
18 Local 139; is that correct?

19 A. Yes, sir.

20 Q. And this E-mail chain led to those
21 July 30th negotiations being cancelled to your
22 knowledge; is that correct?

23 A. Yes, sir.

24 MR. WIESE: I'll offer General Counsel
25 Exhibit 26.

1 MS. HILL: No objection.

2 JUDGE ROSAS: General Counsel's 26 is
3 received.

4 (GCX 26 received.)

5 BY MR. WIESE:

6 Q. Based on this document, the reason that
7 the funeral -- or excuse me -- that the
8 negotiations were cancelled for July 30th was
9 due to the funeral of an -- of somebody's
10 father-in-law; is that correct?

11 A. Yes, sir.

12 Q. Who is -- Jeremy's father-in-law; is
13 that correct?

14 A. Jeremy Vessley. He is our PCM in
15 PC789.

16 Q. Did you attend that funeral?

17 A. I did not.

18 Q. Did anyone from the bargaining team
19 attend that funeral to your knowledge, Sunbelt's
20 bargaining team?

21 A. Not that I am aware, no.

22 Q. Did you attend the visitation?

23 A. I did not.

24 Q. Did anyone from the Sunbelt bargaining
25 team attend that visitation, to your knowledge?

1 A. Not that I am aware of.

2 Q. At the time that you sent this E-mail,
3 did you know what time the visitation and
4 funeral were scheduled during the day on
5 July 30th?

6 A. Yes.

7 Q. Okay. What time if you can recall?

8 A. The visitation I believe started at
9 10:00. The funeral was at 2:00 and then the
10 burial was, you know, after the funeral itself.

11 Q. That would be 10:00 a.m. and 2:00 p.m.?

12 A. Yes, sir.

13 Q. Okay. Let's go to General Counsel
14 Exhibit 40. Do you recognize this document?

15 A. Yes, sir.

16 Q. This E-mail is with regard to again
17 collective bargaining or reference collective
18 bargaining negotiations with Local 139?

19 A. Yes, sir.

20 Q. And this E-mail led to November
21 negotiations with Local 139 being cancelled; is
22 that accurate?

23 A. I don't know that we cancelled them. I
24 think we postponed them.

25 Q. Okay. But it led to the date for

1 negotiations being pushed back to a later date,
2 right?

3 A. Yes, sir.

4 MR. WIESE: Okay. I'll offer General
5 Counsel Exhibit 40.

6 MS. HILL: No objection, your Honor.

7 JUDGE ROSAS: General Counsel's 40 is
8 received.

9 (GCX 40 received.)

10 BY MR. WIESE:

11 Q. And the reason that is listed in this
12 E-mail for why the negotiations were postponed
13 appears to be some number of things that are
14 pushed our fleet planning for next year back
15 further than what we had planned. Do you see
16 that?

17 A. Yes.

18 Q. Okay. What is a fleet planning
19 process?

20 A. It's the foundational piece for the
21 budgeting.

22 Q. So what is fleet planning I guess?

23 A. Identifying the units that we wish to
24 either dispose of, sell, you know, move out of
25 the fleet, move to other locations in or what

1 other additional fleet we would be bringing in
2 to replace those units or are we upsizing or
3 downsizing.

4 Q. Are there documents that you rely on
5 during the fleet planning process?

6 A. It's a computer program that we work
7 our way through and then prior year financials
8 and fleet size.

9 Q. The computer program that you use, what
10 program is that?

11 A. We uploaded it into Excel but then the
12 after that it loads it into -- I don't know the
13 name of the software we use.

14 Q. Okay. Do you retain those Excel files?

15 A. Those are kept on a server. They are
16 not on my laptop, and I don't know anybody that
17 has got them on their laptop to be honest.

18 Q. There is a centralized server where
19 those Excel spreadsheets are kept at?

20 A. Should be, yes.

21 Q. Do you know if those Excel spreadsheets
22 are deleted on that server, if you have any
23 knowledge?

24 A. I don't know.

25 Q. Do you recall what the fleet planning

1 issues were at the November of 2018?

2 A. There were some questions about where
3 we were going, and what we are were going to do
4 and the size of the fleet. We were looking for
5 additional information to try to firm that up
6 because that has to be done before we can go on
7 to the next level with budgeting. We have got a
8 very disciplined approach as to how we do it.

9 Q. When did you plan to complete the fleet
10 planning at that time?

11 A. If I am not mistaken, it had to be
12 produced and delivered prior to the 1st of
13 December.

14 Q. Did you exchange any E-mails with
15 anyone around that time regarding the issues you
16 were having with fleet planning?

17 A. I honestly don't recall.

18 Q. And which profit center was -- was it
19 one specific profit center that was having fleet
20 planning issues or was it multiple?

21 A. This was the entire district.

22 Q. This was the entire district. Do you
23 know how long Sunbelt retains E-mails for?

24 A. I have no idea.

25 Q. Okay. So if you went back to your

1 inbox, you are not sure how far back you can go
2 in terms of checking E-mails?

3 A. Off the top of my head, I can't tell
4 you.

5 Q. I am going to direct your attention to
6 General Counsel Exhibit 53. Do you recognize
7 this document?

8 A. Yes, sir.

9 Q. This document led to the -- this was
10 related to the January 28th collective
11 bargaining negotiations with Local 139?

12 A. Yes, sir.

13 Q. And this E-mail led to those
14 negotiations being cancelled eventually; is that
15 correct or postponed?

16 A. I prefer postponed, yes.

17 MR. WIESE: I will offer General
18 Counsel Exhibit 53.

19 MS. HILL: No objection.

20 JUDGE ROSAS: General Counsel's 53 is
21 received.

22 (GCX 53 received.)

23 BY MR. WIESE:

24 Q. This E-mail references an adoption
25 hearing in Indianapolis?

1 A. Yes, sir.

2 Q. When did you become aware of that
3 adoption hearing?

4 A. It was either the 9th or the 10th. In
5 fact, I think it was the morning of the 10th
6 Susan called me to tell me that they had finally
7 got a date.

8 Q. And who is Susan?

9 A. My wife.

10 MR. WIESE: Okay. Nothing further.

11 JUDGE ROSAS: Charging Party, anything?

12 MR. RYAN: Maybe just a couple if I can
13 take a minute, your Honor.

14 JUDGE ROSAS: Sure.

15 MR. RYAN: I am ready, your Honor, when
16 you are.

17 JUDGE ROSAS: Okay. We are on.

18 CROSS EXAMINATION

19 BY MR. RYAN:

20 Q. Mr. Bogardus, if I could direct your
21 attention to General Counsel Exhibit 28 for a
22 minute.

23 A. Yes, sir.

24 Q. Can you help me understand the time
25 frame that you are representing in this

1 document?

2 A. From the time the union started the
3 bannering and picketing, I realize you don't
4 think it's a picketing, but when you got a
5 little sign with a stake on it, to me it's
6 picketing.

7 Q. We will reserve that argument for our
8 briefs.

9 A. It's from the time that that started
10 until Mayish of this year.

11 Q. Okay. And then the same thing with
12 General Counsel Exhibit 29?

13 A. Yes, sir.

14 Q. I think you testified that this was
15 created roughly two weeks before 28th?

16 A. Yes.

17 Q. So from the start of the activity until
18 when you created it?

19 A. Yes.

20 MR. RYAN: I don't have anything
21 further. Thank you.

22 JUDGE ROSAS: Anything?

23 MS. HILL: Yes.

24

25

CROSS EXAMINATION

BY MS. HILL:

Q. Mr. Bogardus, would you please put Exhibit 28 in front of you, sir?

A. Yes, sir. Yes, ma'am. Sorry. Sorry, Pat.

Q. You have listed PC 789 you also mentioned PC 7089 in part of your discussion regarding Exhibit 26. This one you have zero dollars there. Why is that?

A. At this point they hadn't been impacted the way the other PCs had been impacted.

Q. And where is 789?

A. Wausau.

Q. Now, if you would please look at Exhibit 26.

A. Yes, ma'am.

Q. With respect to Jeremy's father-in-law dying, what, if anything, did you have to do with respect to what you lay out here is this people thing?

A. Jeremy and his team are very close. They have known each other for a lot of years, worked together at other places before Sunbelt and they all wanted to attend the funeral and

1 the visitation and the mass as well as the
2 interment. I went up to --

3 THE REPORTER: I'm sorry, your Honor.
4 I didn't hear that.

5 JUDGE ROSAS: Can you repeat that?

6 THE WITNESS: In the process of Jeremy
7 had a lot of his guys were best friends and that
8 work with them. They all wanted to go to the
9 funeral. That would have left the store with no
10 one there. Two of the guys volunteered to stay,
11 one of the drivers and one of the mechanics and
12 I went up to run the office, you know, for the
13 time period they were going to be out.

14 BY MS. HILL:

15 Q. Did you have any other employees that
16 you could have moved into those slots of PCM or
17 OSR or equipment rental specialist, anyone like
18 that?

19 A. No. At that point there was no way I
20 could get anybody out of the other PCs. We were
21 in the middle of the vacation season and we are
22 not highly staffed anyway.

23 MS. HILL: No further questions, your
24 Honor.

25 JUDGE ROSAS: Any follow up?

1 MR. WIESE: Just briefly, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. WIESE:

4 Q. With respect to filling in at Jeremy's
5 store, Jeremy's profit center, I can't remember
6 which one you said --

7 A. PC 789.

8 Q. PC 789. Thank you. Prior to your
9 filling in there, did you check with any other
10 Sunbelt employees to see if they could fill in?

11 A. I collected with the PCMs to see what
12 they are vacation schedules looked like and what
13 the depend and their time appeared to be and
14 there was nothing else that was available.

15 MR. WIESE: Okay. Okay. No further
16 questions.

17 JUDGE ROSAS: Any follow up, Charging
18 Party?

19 MR. RYAN: No, your Honor. Thank you.

20 JUDGE ROSAS: Anything?

21 MS. HILL: No, your Honor.

22 JUDGE ROSAS: Thank you, sir. You are
23 excused. Please do not discuss your testimony
24 with anyone unless you are otherwise advised
25 otherwise by counsel.

1 THE WITNESS: Yes, sir.

2 JUDGE ROSAS: Off the record.

3 (Whereupon, a discussion was had
4 off the record.)

5 JUDGE ROSAS: Are we ready to go on the
6 record? Next witness.

7 MR. WIESE: Counsel calls Rebel
8 Strohmeier to the stand.

9 JUDGE ROSAS: Please raise your right
10 hand.

11 (Witness sworn.)

12 JUDGE ROSAS: Please state and spell
13 your name and provide us with an address.

14 THE WITNESS: Okay. Home address or
15 business?

16 JUDGE ROSAS: Business is fine.

17 THE WITNESS: My name is Rebel Lynn
18 Blake Strohmeier. R-E-B-E-L, L-Y-N-N,
19 B-L-A-K-E, S-T-R-O-H-M-E-Y-E-R, and my business
20 address is 679 Heartland Drive, in Sugar Grove,
21 Illinois 60554.

22

23

24

25

1 REBEL L. BLAKE STROHMEYER,
2 after being first duly sworn, depose and saith
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. WIESE:

6 Q. Ms. Strohmeyer, my name is Tyler Weise.
7 I am an attorney with the National Labor
8 Relations Board. I am going to be asking you a
9 couple questions today.

10 A. Okay.

11 Q. What is your current -- who do you
12 currently work for?

13 A. Sunbelt Rentals.

14 Q. What do you do for Sunbelt Rentals?

15 A. I am a regional HR manager.

16 Q. How long have you been in that position
17 for?

18 A. Three years.

19 Q. Are you currently in that position?

20 A. Yes.

21 Q. And what are your job duties as a
22 regional HR manager?

23 A. I manage the spectrum of HR functions
24 for two regions for Sunbelt, so I -- it's a lot
25 to describe. I am trying to think where do I

1 start. I don't -- we have recruiting and we
2 have payroll and we have these different
3 departments that are related to HR. I kind of
4 help bridge the gap between all of those. I do
5 a lot of any kind of disciplinary actions. I
6 have involvement in the hiring. I am involved
7 in all the terminations, employee relations,
8 benefits, those sorts of things.

9 Q. And what are the two regions you are in
10 charge of HR for?

11 A. I have Region 9 and Region 13.

12 Q. What are those regions located
13 geographically?

14 A. So Region 9 starts in the west at Fargo
15 and then encompasses like the Dakotas, Nebraska,
16 it comes across and it's Minnesota, Wisconsin
17 the greater Chicago area, Michigan and then just
18 touches on Indiana, Ohio, and, yeah.

19 Q. What about Region 13?

20 A. Region 13 is southern Illinois, the
21 entire State of Missouri, a little bit of Kansas
22 and a little bit of Kentucky.

23 Q. Who do you report to?

24 A. I report to one of the HR directors and
25 her name is Vicky Gibson.

1 Q. Who reports to you?

2 A. A generalist named Amanda Thomas.

3 Q. Do you report to Jason Mayfield the
4 internal vice president for Region 9?

5 A. I have a dotted line to Jason Mayfield
6 but my direct manager is Vicky Gibson.

7 Q. Do you have disciplinary authority in
8 your position?

9 A. Yes, I do.

10 MR. WIESE: Your Honor, permission to
11 question the witness under 611(c).

12 JUDGE ROSAS: Granted.

13 BY MR. WIESE:

14 Q. Ms. Strohmeier, how long have you been
15 in a human resources capacity?

16 A. Probably 11 years.

17 Q. And what are your qualifications?

18 A. I have a bachelor's degree in
19 sociology, I have a master's degree in human
20 resource development and I am a certified senior
21 professional human resources.

22 Q. One of your jobs in HR is to ensure
23 compliance with certain laws regarding
24 employment; is that accurate?

25 A. Yes.

1 Q. Including anti-discrimination laws?

2 A. Correct.

3 Q. Okay. And anti-disability laws?

4 A. Yes.

5 Q. And the National Labor Relations Act,
6 is that also something you assure compliance
7 with?

8 A. To the best of my ability, yes.

9 Q. During your time working with Sunbelt,
10 have you had any prior experience with layoffs
11 prior to the Franksville layoff on August 8th of
12 2019?

13 A. Yes. I had one store, one satellite
14 location that we closed due to the needs of the
15 business and we did have some layoffs at that
16 location.

17 Q. What was that location?

18 A. In Burlington, Iowa.

19 Q. Was that in Region 9?

20 A. Yes, it was.

21 Q. And who was the regional vice president
22 at the time that facility closed?

23 A. Bryan Albrecht.

24 Q. What role did you have in the closure
25 of that facility?

1 A. It was a very small -- it was a
2 satellite location so not a full fledged PC and
3 it really -- the purpose of it was to service a
4 fertilizer plant and then when the job and kind
5 of the greater business of that plant went away,
6 we decided to close that facility and so I went
7 down and met with the employees and informed
8 them of the closing and the projected dates and,
9 you know, what the severance and any related
10 things like that would be for them.

11 Q. Did you conduct any sort of that impact
12 analysis regarding protected categories like
13 age, race, anything with regard to that closure?

14 A. No.

15 Q. Okay. When you met with the employees
16 for that closure what was the purpose of that
17 meeting?

18 A. To just inform them that we were
19 closing the store. I mean it had been rumored
20 for a while and they kind of knew that it was
21 coming and then there were a couple of them in
22 that situation that we actually had positions
23 open in stores that were at a reasonable
24 distance, so we did offer them the opportunity
25 to have a position at one of those stores but

1 they were open positions at those stores that
2 they were qualified for.

3 Q. Did those individuals have to apply for
4 those positions or were they directly
5 transferred?

6 A. Yes. Yes. We informed them that if
7 they were interested in this, there was an open
8 position. That they could apply for it and then
9 we would facilitate that transfer.

10 Q. Transitioning now to the Franksville
11 layoff, you are familiar with that layoff,
12 correct?

13 A. Yes.

14 Q. Were you involved at all in the
15 decision making process as to whether to lay off
16 the employees at the Franksville location?

17 A. No.

18 Q. When did you become aware that that
19 decision had been made?

20 A. I received an E-mail from my director
21 on the afternoon of Monday, August 5th and the
22 E-mail simply said I think it was just a couple
23 of sentences but I think it said please review
24 these layoff letters and the employees -- it
25 included for three employees and then the last

1 sentence was building severance agreements too.
2 I believe Amanda has that template referring to
3 my general list.

4 Q. Okay. And if you direct your attention
5 to so there is a binder up there in front of
6 you.

7 A. Okay.

8 Q. If you flip in that binder to document
9 marked as General Counsel Exhibit 31 there
10 should be some tabs and if you look to 31, that
11 will help. Are you there?

12 A. Yes.

13 Q. Is this the E-mail you were referring
14 to in your testimony?

15 A. Yes.

16 Q. Thank you. And this was the first time
17 that you heard about this decision?

18 A. Yes.

19 Q. And at the time you received this
20 E-mail, was it your understanding that a
21 decision had been made to lay off those three
22 employees?

23 A. Yes. Right. This was the first, yes.

24 Q. And if you look at the next document in
25 that binder General Counsel Exhibit 32 --

1 A. Okay.

2 Q. -- if you can recall were these the --
3 so E-mail in General Counsel Exhibit 31 has some
4 attachments listed in it. Do you see that?

5 A. Yes.

6 Q. Okay. And these letters in General
7 Counsel Exhibit 32 are these the attachments to
8 that E-mail as best you can?

9 A. As best as I can recall, yes.

10 Q. Okay. Looking at General Counsel
11 Exhibit 32, did you send these letters to the
12 employees --

13 A. No.

14 Q. -- in question?

15 A. No.

16 Q. Do you know how they were delivered to
17 those employees?

18 A. These letters were not delivered to the
19 employees.

20 Q. Was there a different version of this
21 letter that was provided to the employees?

22 A. Yes.

23 Q. Did you draft that letter?

24 A. I made some modifications to this
25 letter and it was delivered to the employees,

1 yes.

2 Q. When did you make those modifications?

3 A. I believe it was probably August 7th.

4 Q. What modifications did you make?

5 A. I included a statement that they would
6 be paid through August 16th so there was some
7 additional language about that and that was I
8 can't recall exactly but I think that that was
9 one of the primary modifications, and then the
10 rest of the language was very similar, if not
11 the same and that their last day worked would
12 have been August 8th instead of August 7th as
13 stated on this version.

14 Q. Okay.

15 A. And I should also say this says that a
16 severance has been included for further review.
17 That part was taken out because we were going to
18 negotiate the severance.

19 Q. So if you go into that binder now and
20 flip over to General Counsel Exhibit 17, do you
21 recognize this document?

22 A. Yes.

23 Q. Okay. Did you review this document
24 before it was sent out to the union?

25 A. Yes, I did.

1 Q. Do you recall when you reviewed this
2 document?

3 A. It would have been August 6th.

4 Q. Okay. At the time you reviewed this
5 document, did you understand the term
6 reorganization in this letter to mean that
7 employees were being laid off at Profit Center
8 776?

9 A. I understood from Mr. Mayfield that the
10 intent was to eliminate the service department
11 and those employees, yes.

12 Q. And those were the union represented
13 employees who were still employed at that
14 facility, correct?

15 A. Correct.

16 Q. So if you look now at the documents
17 that I gave you that aren't in the binder so if
18 you pick up with the top document it should be
19 marked as General Counsel Exhibit 33.

20 A. Okay.

21 Q. Do you recognize this document?

22 A. Yes, I do.

23 Q. And what is it?

24 A. It was an E-mail between me and several
25 other employees of Sunbelt.

1 Q. And this E-mail is explaining the
2 employment of Mario Rivera; is that correct?

3 A. Correct.

4 Q. Okay. Mario Rivera worked at the
5 Franksville location; is that correct?

6 A. Yes.

7 Q. And he was represented by the union?

8 A. I mean, not officially I guess but in
9 negotiations, yes.

10 Q. Okay. Okay. And do you recall why you
11 wrote this E-mail on September 16th of 2019?

12 A. Yes. Because he had transferred to our
13 specialty division; so at that point, he is not
14 under my umbrella anymore. I handled the
15 general tool division and there was some
16 confusion between multiple parties about, okay,
17 what's happening with him? He had a worker's
18 comp situation after the transfer was initiated
19 and then there was some changing of positions
20 and so I tried to get all the information
21 together and communicate to everyone that was
22 involved because like I said there was some kind
23 of confusion because the last that I had heard,
24 you know, he had applied for and had been
25 accepted into the position at what we call PC

1 1179 in Watertown as an HVAC tech and then when
2 we returned, when he got his release which again
3 I was not in the loop on because he had already
4 transferred to Climate Control, I found out that
5 he had came back and was working at the Waukesha
6 location; so I was trying to see what was going
7 on with him.

8 I also needed to issue some
9 disciplinary action to him because he failed to
10 perform some of our safety expectations which
11 ultimately resulted, you know, as part of his
12 injury and so I needed to find out who like who
13 I was delivering that to and so I sent this out
14 to these different parties that were involved so
15 that we were all on the same page about what
16 happened in Mario's transfer and where he was
17 and why.

18 Q. Do you recall what period of time Mario
19 was working at the Waukesha location?

20 A. I believe I think it says in here he
21 was out on worker's comp leave through
22 September 15th and then I believe when he got
23 his release to return to work from worker's
24 comp, that he was brought into the Waukesha
25 location. That's where he began working

1 following his release.

2 Q. And the Waukesha location, is that a
3 general tool facility?

4 A. No. It's a Climate Control. We have a
5 general tool in Waukesha but this particular PC
6 587 that's located in Waukesha as well, separate
7 store, separate division.

8 Q. Okay.

9 JUDGE ROSAS: Since the witness is
10 reading from the document, is there going to be
11 any objection to it going into evidence? You
12 are offering it?

13 MS. HILL: No.

14 MR. WIESE: Yes. I will offer it.

15 JUDGE ROSAS: General Counsel's 33 is
16 received.

17 (GCX 33 received.)

18 BY MR. WIESE:

19 Q. If you go back to the binder of
20 exhibits now and I want to look at General
21 Counsel Exhibit 19. Do you recognize this
22 document?

23 A. Yes.

24 Q. And this is the severance agreement for
25 one of the bargaining union employees at the

1 Franksville location; is that correct?

2 A. Correct.

3 Q. Did you present this agreement to the
4 bargaining unit employee?

5 A. I did not.

6 Q. Okay. Were you there -- Did you have
7 any discussions with this bargaining unit
8 employee Mr. Romanowski regarding this
9 agreement?

10 A. During the -- I was on the phone for
11 the separation meetings and this was presented
12 at a later time after these were negotiated, but
13 I didn't have any conversations with Mr.
14 Romanowski about the release agreement, no.

15 Q. And with respect to General Counsel
16 Exhibit 20, which is the same document for --
17 you can turn to that. This is the same document
18 with another employee Kyle McKellips; is that
19 accurate?

20 A. Yes.

21 Q. Did you have any discussion with Mr.
22 McKellips about the release agreement?

23 A. I did not, not about the release
24 agreement, no.

25 Q. I am going to direct your attention now

1 to General Counsel Exhibit 46 which is it should
2 be the second document in the loose documents
3 that I gave you.

4 A. Okay.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. And this is a portion of Sunbelt's
8 policies and procedures document, correct?

9 A. Correct.

10 Q. Okay.

11 MR. WIESE: And I'll offer General
12 Counsel Exhibit 46.

13 MS. HILL: No objection, sir.

14 JUDGE ROSAS: General Counsel 46 is
15 received.

16 (GCX 46 received.)

17 BY MR. WIESE:

18 Q. So if you look at Policy 5.8 on the
19 first page, that deals with Separations from
20 Employment; is that correct?

21 A. Yes.

22 Q. And then if you go over to the third
23 page of document, the very bottom, it looks like
24 5.8.3 deals with Layoffs; is that correct?

25 A. Yes.

1 Q. And you'd agree with me that these
2 policies are supposed to be followed by all
3 people who work for Sunbelt?

4 A. Yes.

5 Q. And they are important policies?

6 A. Yes.

7 Q. I'd like to direct your attention now
8 to General Counsel Exhibit 57.

9 A. Was there another question regarding
10 this?

11 Q. No. No more questions. Thank you.
12 With respect to General Counsel Exhibit 57, do
13 you recognize these documents?

14 A. Yes, I do.

15 Q. These are separation notices, correct,
16 for Kyle McKellips and Allan Romanowski?

17 A. Yes.

18 Q. And these are the two -- the two union
19 represented employees for the Franksville
20 facility?

21 A. Yes.

22 Q. And you created -- you were the one who
23 created these separation notices?

24 A. Yes.

25 Q. You created them on August 8th of 2019?

1 A. Yes.

2 MR. WIESE: I'll offer General Counsel
3 Exhibit 57.

4 MS. HILL: No objection.

5 JUDGE ROSAS: General Counsel 57 is
6 received.

7 (GCX 57 received.)

8 BY MR. WIESE:

9 Q. With respect to Mr. McKellips in the
10 top third of the document on the right-hand
11 side, there is some check boxes there is paid
12 vacation. Do you see that?

13 A. Yes, I do.

14 Q. And then eligible for rehire and I want
15 to ask about the one below that, union employee.
16 Do you see that box?

17 A. Yes.

18 Q. Do you recall why you checked the no
19 box in that check box?

20 A. Because he was not covered by our
21 ratified documents, so in our world that means
22 that he is not subject to any kind of contract
23 which would be reviewed as part of the
24 termination and separation process.

25 Q. Okay. And with respect to Mr.

1 Romanowski on the second page, the same
2 explanation would apply to him?

3 A. Yes.

4 Q. Okay. So within region -- so you are
5 HR manager for Regions 9 and 13, correct?

6 A. Yes.

7 Q. And within those regions, how many
8 stores are there?

9 A. There is 75 locations total between the
10 two regions.

11 Q. Besides the store closure in
12 Burlington, the layoff at Franksville is the
13 only layoff that you have been a part of with
14 Sunbelt; correct?

15 A. Correct.

16 Q. And that layoff only affected the union
17 represented employees at the Franksville
18 facility correct?

19 A. It involved the service department,
20 yes.

21 Q. And those were the employees who were
22 represented by the union; is that right?

23 A. Yes.

24 Q. Out of the 75 stores that are under
25 your purview, none of those stores are will-call

1 facilities, are they?

2 A. No.

3 Q. Besides the Franksville facility now of
4 course.

5 A. Yes.

6 Q. And prior to the Franksville facility
7 being turned into a will-call facility, you had
8 no prior experience with that transition, did
9 you?

10 A. I'm sorry. I am not sure what you
11 mean.

12 Q. The transition -- so let me back it up.
13 So the Franksville facility was changed from a
14 general tool facility to a will-call general
15 tool facility; is that accurate?

16 A. Yes.

17 Q. And this -- the transition that
18 occurred at the Franksville facility, this was
19 the first time in your experience working for
20 Sunbelt that a transition of this type had
21 occurred?

22 A. From a general tool PC to a will-call
23 facility, yes.

24 Q. Okay. And with regard to -- you are
25 familiar with the term head count, correct?

1 A. Yes.

2 Q. And head count means the number of
3 people working at given store, correct?

4 A. Right.

5 Q. And according to Sunbelt's policies,
6 any change to the head count is supposed to be
7 run through you if it occurs in either Region 9
8 or Region 13; is that correct?

9 A. Not necessarily.

10 Q. Okay. So it's your testimony today
11 that not all -- that not every change to head
12 count is supposed to be run through you?

13 A. I have a lot of different situations
14 and different types of stores even within
15 general tool so it would depend on, you know,
16 particular situations generally. I am involved
17 in any of those types of situations where we may
18 be adding head count, but it doesn't absolutely
19 require my approval.

20 Q. Okay. I am not asking about approval,
21 though. You are involved in the process?

22 A. I am involved in the process.

23 Q. Okay. Of a change in head count?

24 A. Yes.

25 Q. And that includes the removal of

1 employees as well as the addition of employees,
2 correct?

3 A. What do you mean by "removal"?

4 Q. When you are -- when you have less a
5 lower head count than you did before the
6 decision?

7 A. Like a position elimination?

8 Q. Yes.

9 A. Yes.

10 Q. And the elimination of the individual
11 employee as well, correct?

12 A. Correct.

13 MR. WIESE: Nothing further.

14 JUDGE ROSAS: Charging Party, anything?

15 MR. RYAN: Just a quick clarification
16 question.

17 CROSS EXAMINATION

18 BY MR. RYAN:

19 Q. In regards to the Franksville location,
20 you talked about eliminating the service
21 department. Can you maybe expand on that a
22 little bit more? What do you mean when you say
23 the "service department"?

24 A. My understanding is that the
25 reorganization there was eliminating the service

1 department because there wouldn't be a need for
2 the services that are typically required in the
3 servicing of larger equipment and as part of the
4 reorganization my understanding was that they
5 were moving out the significant portion of the
6 larger equipment to just leave some of the
7 smaller general tool items that would be present
8 in a will-call facility.

9 Q. Okay. Thank you. The service
10 department, though, is -- can you define your
11 understanding of service department?

12 A. Would be those employees whose job
13 profiles would be assigned to the department
14 that provides the servicing of equipment both in
15 the location and the shop and as far as getting
16 kind of road mechanics or outside service that
17 would be tied to that particular location.

18 MR. RYAN: Okay. Thank you. Nothing
19 further, your Honor.

20 JUDGE ROSAS: Cross?

21 MS. HILL: No, your Honor.

22 JUDGE ROSAS: Thank you, ma'am. You
23 are excused. Please do not discuss your
24 testimony with anyone until you are advised
25 otherwise by counsel.

1 THE WITNESS: Okay.

2 JUDGE ROSAS: Thank you. Have a good
3 day off the record.

4 (Whereupon, a lunch recess was
5 taken.)

6 JUDGE ROSAS: Back on the record. Next
7 witness.

8 MR. WIESE: Your Honor, counsel calls
9 Jamie Smith to the stand.

10 JUDGE ROSAS: Please raise your right
11 hand.

12 (Witness sworn.)

13 JUDGE ROSAS: Please have a seat.
14 State and spell your name and provide us with an
15 address.

16 THE WITNESS: State and spell my name?
17 My name is Jamie Smith spelled J-A-M-I-E and
18 then S-M-I-T-H, and my address is 2880 West
19 Southway Drive, Franklin, Wisconsin 53132.

20 JUDGE ROSAS: Okay. Have a seat and
21 please keep your voice up.

22

23

24

25

1 JAMIE SMITH,
2 after being first duly sworn, depose and saith
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. WIESE:

6 Q. Mr. Smith, where do you currently work?

7 A. I am currently unemployed right now.

8 Q. Where did you work prior to being
9 unemployed?

10 A. I worked for Naperville Excavating and
11 before that Sunbelt Rentals.

12 Q. What did you do for Sunbelt Rentals?

13 A. I am a CDL driver, did pick ups and
14 deliveries throughout southeast Wisconsin.

15 Q. How long were you employed with
16 Sunbelt?

17 A. About a little over four years.

18 Q. Can you identify the four-year period
19 you were a driver? What starting when? When
20 did you start becoming a driver?

21 A. Well, it would be about I guess four
22 years ago.

23 Q. Okay. And when was had your last --
24 when was your last day working as a driver with
25 Sunbelt?

1 A. July 1st.

2 Q. Of what year?

3 A. This year, 2019.

4 Q. Who was your supervisor at Sunbelt?

5 A. It would have been Bryan Anderson.

6 Q. What types of equipment did you haul
7 when you worked for Sunbelt?

8 A. I hauled everything from boomless
9 backhoes, rough terrain forks, all the way down
10 a pressure washer.

11 Q. Did you haul equipment that weighed
12 less than 10,000 pounds?

13 A. Yes.

14 Q. How frequently?

15 A. Pretty much a lot. I mean, whatever
16 was in for rent, we could take. It could be a
17 ladder. It could be, what do you call them,
18 backpack vacuums. People laugh when you bring
19 them with a semi but --

20 Q. Besides hauling equipment, what if
21 anything, else did your job as a driver for
22 Sunbelt involve?

23 A. As a driver for Sunbelt, pretty much it
24 was just hauling equipment. We'd haul it, pick
25 it up and sometimes you go to other branches,

1 pick stuff up, drop stuff off.

2 Q. Did you unload the equipment yourself
3 when you were a driver?

4 A. Yes. Load and unload.

5 Q. How did your employment end with
6 Sunbelt?

7 A. I was let go for not taking a safety
8 quiz because I had forgot about it.

9 Q. Who made the decision to let you go?

10 A. It would have been Bryan Anderson and
11 Bo.

12 Q. Do you know Bo's last name?

13 A. Bogardus.

14 Q. During your time working at Sunbelt,
15 did hear any managers or supervisors make any
16 negative comments about the union?

17 A. The only thing I heard was from Chris
18 the shop manager.

19 Q. And when did you hear this statement
20 from the shop manager Chris?

21 A. I would have to say it was probably
22 early spring this year.

23 Q. Of what year?

24 A. This year.

25 Q. Do you know Chris' last name?

1 A. Pendel, Pendle, something like that.
2 Chris Pendle.

3 Q. Where was Mr. Pender when he made this
4 remark?

5 A. He would have been probably right where
6 his office was in the shop, I believe.

7 Q. And were you in the office when Mr.
8 Pender made this remark?

9 A. Not in his office. His office is
10 actually like part of the shop and there is
11 doors that go into the main lobby entrance from
12 the shop and I was coming out them doors.

13 Q. Okay. How far away from his office
14 were you when you made this remark?

15 A. His office door, maybe ten feet.

16 Q. Was anybody else present in the office
17 with Mr. Ryan presented Pender?

18 A. There was a couple of shop guys.
19 Exactly who now, I don't remember. It's been so
20 long.

21 Q. And could you clearly hear Mr. Pender
22 make this remark?

23 A. Yes.

24 Q. Did you recognize his voice?

25 A. Sure. Yeah.

1 Q. And what did you hear overhear Mr.
2 Pender say?

3 A. Well, he said that the union was never
4 going to get in and it was never going to happen
5 but the thing was is the union was already voted
6 in for over a year and the contract was being
7 worked on.

8 Q. Did you overhear Mr. Pender say
9 anything else?

10 A. No. I believe that was it. I had to
11 keep going. I was a driver it was kind of go,
12 go, go. I was never really too much at the
13 shop.

14 Q. How long did you listen to Mr. Pender
15 speak to the employees?

16 A. That was maybe 5, 10 seconds. It
17 wasn't long.

18 Q. Did this conversation stand out to
19 you --

20 A. Yes.

21 Q. -- when you heard it? Why is that?

22 A. Because like I stated the union was
23 already voted in. Why would it not get in now.

24 Q. I am going to direct your attention to
25 in the exhibit binder in front of you there

1 should be a binder, black binder. Do you see
2 that?

3 A. I do.

4 Q. If you turn in that exhibit, that
5 binder, to what's marked as General Counsel
6 Exhibit 25 so there should be some tabs in
7 there. If you open it up, there should be 25.

8 A. The picture?

9 Q. Yeah. It's a series of pictures and
10 I'll direct you to specific pages in there, so
11 if you look at Page 5 of that exhibit, what type
12 of truck is that?

13 A. That's a tractor-trailer. It's for
14 hauling equipment.

15 Q. Is that the same type of truck that you
16 drove when you worked for Sunbelt?

17 A. It looks identical to it, yep.

18 Q. Did you pull trailers like that when
19 you worked for Sunbelt?

20 A. Yep. Same trailer, same truck.

21 Q. What type of trailer is that?

22 A. They call it a lowboy. I think they
23 were Landoll.

24 Q. If you go to Page 7 of the exhibit, do
25 you recognize what type of equipment that is on

1 the trailer back there?

2 A. It looks like a mini backhoe.

3 Q. Did you haul that type of equipment
4 when you worked for Sunbelt?

5 A. Yep.

6 Q. If you go to Page 9 of General Counsel
7 Exhibit 25, do you recognize what's on the back
8 of the trailer in that picture?

9 A. Yeah.

10 Q. And what's back there?

11 A. Well, it looks like the backhoe. It
12 looks like a roller. I can't make out all of it
13 but it's all stuff we would haul.

14 Q. And if you turn over to Page 10 of the
15 exhibit, did you haul the type of equipment
16 shown on the trailer in Page 10 of General
17 Counsel Exhibit 25?

18 A. Yes. Hauled that, too, and everything
19 you can see in the background, all that time.

20 Q. If you go to Page 36, are you there?

21 A. Yeah.

22 Q. Okay. Do you recognize the equipment
23 on the back of the trailer there?

24 A. I do.

25 Q. Okay. What type of equipment is that?

1 A. It looks like a boom lift and a
2 backhoe.

3 Q. Did you haul that type of equipment
4 when you worked or Sunbelt?

5 A. Yep.

6 Q. How --

7 A. All the way down to that little yellow
8 cart you see in the front on the ground and
9 everything.

10 Q. If you go to Page 40 of the exhibit.
11 41 is actually better. Go to Page 41. Do you
12 recognize this piece of equipment?

13 A. The one on the truck?

14 Q. Yeah.

15 A. Yes.

16 Q. And did you haul this type of
17 equipment?

18 A. We did, yeah, and everything you see in
19 front of the truck.

20 MR. WIESE: Nothing further.

21 JUDGE ROSAS: Charging Party, anything?

22 MR. RYAN: No, your Honor. Thank you.

23 JUDGE ROSAS: Cross?

24 MS. HILL: Yes.

25

CROSS EXAMINATION

BY MS. HILL:

Q. Looking at --

MR. WIESE: Sorry to interrupt you.

Would you like the affidavit before the cross?

MS. HILL: Sure.

MR. WIESE: Okay.

JUDGE ROSAS: Let's go off the record.

(Whereupon, a discussion was had
off the record.)

JUDGE ROSAS: Cross?

BY MS. HILL:

Q. All right. Mr. Smith, would you please
look at Page 41?

A. Same one we were just on?

Q. Yes, sir.

A. Yep.

Q. You indicated that you hauled that
yellow and black John Deere piece of equipment?

A. Yeah. Very similar, same, yeah.

Q. And you said even that I think you
called it the little yellow piece of equipment?

A. Yeah. Little yellow cart there in
front, too.

Q. Correct. That's a piece of Sunbelt

1 equipment, correct?

2 A. Yeah.

3 Q. And so Sunbelt had green equipment; is
4 that correct?

5 A. Yep.

6 Q. And Sunbelt had yellow equipment,
7 correct?

8 A. Yes, and some had other colors if they
9 had bought out from another company and didn't
10 repaint the stuff, yes.

11 Q. Right. As you just stated, how long
12 did it usually take to repaint equipment from
13 let's say -- wait until I am finished -- until,
14 you know, after they bought another company and
15 brought in the equipment, how long would it
16 take?

17 A. Sometimes they never painted anything.
18 They just put numbers on it and use it as that.

19 Q. So you don't think it's unusual to have
20 a yellow cart in this picture?

21 A. No. I worked there for four years.

22 Q. And if you look at Page 40, sir, is
23 that another picture of the little yellow cart?

24 A. Yep.

25 Q. And then to the far right, that's a

1 picture of the piece of equipment that's orange,
2 correct?

3 A. Yep.

4 Q. Now, when you say yellow and orange and
5 other colors, would they still have Sunbelt's
6 logo on them?

7 A. Sometimes, not just numbers.

8 Q. Just numbers?

9 A. Sometimes, yeah.

10 Q. For inventory purposes?

11 A. Yeah but sometimes those numbers aren't
12 always the Sunbelt numbers they were numbers
13 that were already on from the company that had
14 them before and they would use that number, too,
15 sometimes. Uh-huh.

16 Q. Okay. Did Mr. Pender, Chris Pender,
17 ever participate in the negotiations?

18 A. No. He was never there that I know.

19 Q. Okay. You participated --

20 A. I did.

21 Q. -- in almost all of the negotiations,
22 correct?

23 A. Yes.

24 Q. You also mentioned I think this was,
25 just a moment, Page 9, please. You were

1 identifying the backhoe and the roller as to use
2 your words stuff that you would haul for
3 Sunbelt, correct?

4 A. Page 9, yep.

5 Q. And then you also said and also
6 everything in Ahern's yard?

7 A. Well, everything that looks like that.
8 All the scissors, all that type of equipment.
9 It's the same that Sunbelt had. Ahern has the
10 same. United Rentals has the same.

11 Q. I just want to make sure you didn't
12 haul any of Ahern's equipment, though?

13 A. No. That type of equipment, though,
14 Sunbelt has that equipment, Ahern has the same,
15 Franklin has it, United Rentals has the same.

16 Q. Okay. You don't remember the names of
17 the to use your words couple of guys in Mr.
18 Pender's office. Did you speak to those couple
19 of guys later about what Mr. Pender allegedly
20 said?

21 A. Probably not because I had to get
22 going. I'd have to pick up some deliveries and
23 sometimes shop is all gone by the time I get
24 back.

25 MS. HILL: No further questions, sir?

1 JUDGE ROSAS: Any follow up?

2 MR. WIESE: No, your Honor. Not from
3 General Counsel.

4 MR. RYAN: No, your Honor. Thank you.

5 JUDGE ROSAS: Thank you, sir. You are
6 excused. Please do not discuss your testimony
7 with anyone until you are advised otherwise.
8 Thank you.

9 THE WITNESS: Thank you.

10 JUDGE ROSAS: Thank you. Have a great
11 day. Next witness.

12 MR. WIESE: I'll go retrieve him.

13 (Whereupon, a short recess was
14 taken.)

15 JUDGE ROSAS: On the record. Next
16 witness.

17 MR. WIESE: Counsel for the General
18 Counsel calls Ramon Gutierrez to the stand.

19 JUDGE ROSAS: Sir, please raise your
20 right hand.

21 (Witness sworn.)

22 JUDGE ROSAS: Have a seat and state and
23 spell your name and provide us with an address
24 and keep your voice up.

25 THE WITNESS: My name is Ramon

1 Gutierrez. R-A-M-O-N, G-U-T-I-E-R-R-E-Z. I
2 live in 36 -- I mean, excuse me. 3460 South
3 19th Street, Milwaukee, Wisconsin 53215.

4 RAMON GUTIERREZ,
5 after being first duly sworn, deposeth and saith
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. WIESE:

9 Q. Mr. Gutierrez, where do you currently
10 work?

11 A. I am not working at the moment.

12 Q. Prior to being unemployed, where did
13 you work?

14 A. I worked for Environmental Control
15 Industries and -- outside of Foxtown.

16 Q. Have you worked for Sunbelt Rentals in
17 the past?

18 A. Yes. Four years and two months and
19 ten days.

20 Q. I am going to ask you to keep your
21 voice up a little bit.

22 A. I'm sorry.

23 Q. What facility did you work at?

24 A. Franksville and Racine.

25 Q. What did you do at the Franksville

1 facility?

2 A. Well, I was a Mechanic 1. My job was
3 staging all the orders for the next day, making
4 sure everything was in the proper place for the
5 drivers and helping customers and checking the
6 machines.

7 Q. When did your employment end with
8 Sunbelt?

9 A. June 10th of this year.

10 Q. How did your employment end?

11 A. They just called me and they told me
12 that I broke some rules and terminated me right
13 then and there.

14 Q. And when you say "they," who are you
15 talking about?

16 A. Bryan Anderson, Chris Pender and Bo
17 Bogardus.

18 Q. Who was your supervisor at Sunbelt?

19 A. Chris Pender.

20 Q. Are you aware of any efforts while you
21 were working at Sunbelt or were you aware of any
22 efforts while you were working at Sunbelt to
23 decertify or get rid -- are you familiar with
24 that term decertify?

25 A. Decertify, is that for the petition?

1 Q. Yes.

2 A. Yes.

3 Q. To get rid of union?

4 A. Yes.

5 THE REPORTER: I'm sorry, your Honor.

6 I am struggling a little bit to hear.

7 THE WITNESS: The petition he is
8 talking about which get a revote on the union.

9 BY MR. WIESE:

10 Q. And where did you become aware of the
11 efforts to get a revote on the union?

12 A. I was talking to Mario Rivera. He said
13 if we could get three signatures, we could get
14 it revoted. We were tired of having to go
15 through the process. It was taking forever.

16 Q. And when -- so I am asking when did you
17 become aware of that?

18 A. That's when Bryan Anderson came to my
19 bay, I was in the last bay in the back and he
20 told me that the papers were on the wall --
21 sorry. The paper was up on the wall and if be
22 anybody tells me anything, especially Al, to let
23 him know but at that time I didn't know what he
24 was talking about. When he walked away I was
25 doing my paperwork and I just walked over to see

1 what he was talking about.

2 Q. And when did this interaction with the
3 manager Anderson occur?

4 A. I am going to say -- I am not exactly
5 sure on dates. I am not sure how you say
6 April maybe but I am not sure.

7 Q. April of what year?

8 A. Of this year.

9 Q. And where were you when Mr. Anderson
10 spoke to you about this paper?

11 A. I was doing some paperwork in my bay
12 for some machines I just checked in. I am in
13 the last bay in the building all the way in the
14 back.

15 Q. Did you approach Mr. Anderson or did
16 Mr. Anderson approach you?

17 A. He walked up to me when I was doing
18 paperwork and started telling me that everything
19 was done, that the paperwork was up on the
20 wall --

21 Q. I am going to stop you for a second.
22 I'll ask you what Mr. Anderson said in a second
23 but do you recall what time of day it was when
24 Mr. Anderson approached you?

25 A. It could have been just a little bit

1 before lunch. It wasn't that late.

2 Q. Was anybody else present for this
3 conversation?

4 A. At that time I was the only one
5 standing there.

6 Q. So now what do you recall from that
7 interaction with Mr. Anderson?

8 A. I just recall that I was doing
9 paperwork and he just walked out of nowhere and
10 told me that the papers were up on the wall and
11 by the through doors in the break room, in both
12 of those places and I am looking at him not
13 knowing what he is talking about. He says if
14 anybody tells me anything especially Al to let
15 him know. That he is not going to put up with,
16 zero tolerance. That really blew my mind
17 because I still didn't know what he was talking
18 about.

19 Q. Okay. So you were not aware of what
20 paper he was talking about?

21 A. I wasn't. Not at the time.

22 Q. Did you become aware of that?

23 A. I walked over there to see what he was
24 talking about and I started reading that they
25 had a petition for revote and later on, I found

1 out that they use my signature and I never put
2 my signature on any revote.

3 Q. I don't want to get into that. Let's
4 not talk about that, but I do want to ask you
5 with respect to the Al mentioned by Mr.
6 Anderson. Do you know who he was talking about?

7 A. That was my coworker. He works on bay
8 next to me but at that time he was out in the
9 yard servicing a machine.

10 Q. And do you know Al's last name?

11 A. Romanowski.

12 Q. Does Al have any connection to the
13 union?

14 A. His father was in the union. His
15 father passed away several years ago.

16 Q. What, if anything, do you recall saying
17 in response to Mr. Anderson regarding the things
18 that he brought up?

19 A. I find it funny that he asked me if Al
20 told me anything, so I just joked around. I
21 said Al tells me anything, I will sock him in
22 the mouth but I was just joking --

23 THE REPORTER: I'm sorry. Could you
24 repeat that, please? Your Honor?

25 THE WITNESS: Mr. Anderson told me that

1 -- he came in a second time and asked me if Al
2 told me anything and I told him why would he
3 tell me anything. If he tells me anything, I am
4 going to sock him in the mouth. I was just
5 joking.

6 BY MR. WIESE:

7 Q. This remark you recall about socking Al
8 in the mouth, was this during that same
9 interaction that we were just discussing?

10 A. No. It was a month or so later he came
11 and asked me if anybody been telling me anything
12 about that paperwork that was on the wall for
13 the revote.

14 Q. And I am going -- I want to get there
15 in a second but first I want to finish up the
16 first interaction. Do you recall anything that
17 you said in response to Mr. Anderson the first
18 time he came up to talk to you about this
19 decertification paper?

20 A. No. Not that -- I really didn't know
21 what he was talking.

22 Q. Okay. Let's go to the second
23 conversation. Do you recall when that
24 conversation occurred?

25 A. No. Actually, that time I was in the

1 front by first bay looking at the computer.
2 When he walked out, he was just walking by and
3 he stopped and he walked up to me and he told me
4 how's everything going? I said fine. He said
5 Al or anybody told you anything about that
6 paper? And that's when he told him that if he
7 told me anything, I would sock him and I started
8 laughing with him.

9 Q. Who initialed this second encounter?

10 A. Mr. Bryan -- Mr. Anderson.

11 Q. Was anybody else present during that
12 interaction?

13 A. Not at that time. If they were. They
14 were too far to way to hear us talk.

15 Q. Around the period of time of the second
16 interaction, do you recall having any other
17 conversations with Manager Anderson with about
18 the union?

19 A. Only when one time when I was coming
20 out from having my lunch break and he was
21 walking in he told me your buddies are outside
22 and I said what buddies? I don't have no
23 buddies in Wisconsin. I am from California. He
24 said your union buddies and he pointed at the
25 car outside parked at the corner. I said they

1 are not my buddies. I just walked back to the
2 shop.

3 Q. Was anybody else present for this
4 conversation?

5 A. Dustin was sitting on his computer
6 where he takes orders in the front. I don't
7 know his last name and Gary Stamm was in his
8 little office with the door open. They just
9 peeked over and kept doing the work.

10 Q. Who initiated this conversation?

11 A. Mr. Anderson.

12 Q. When you told Mr. Anderson that you
13 didn't have any boys in Illinois, how did he
14 respond?

15 A. He said your union buddies.

16 Q. And did you respond to that?

17 A. Yes. When he pointed at the car
18 outside I said they are not my buddies, and I
19 don't want to talk to him about the union.
20 That's not healthy.

21 Q. Did this conversation stand out to you?

22 A. Oh, I regret that he came up to me and
23 told me that that day.

24 Q. Why is that?

25 A. I feel like he was singling me. They

1 were always trying to single us out, see how
2 wanted to be union and who didn't, so...

3 THE REPORTER: I'm sorry, your Honor.

4 JUDGE ROSAS: Repeat that, sir.

5 THE WITNESS: I thought he was singling
6 me out. They always try to find out who was for
7 union and who wasn't and we all had to act
8 neutral for our own benefits.

9 BY MR. WIESE:

10 Q. Mr. Gutierrez, were you working at
11 Sunbelt at the time of the -- when the union was
12 voted in to represent employees?

13 A. I was working in the store since the
14 day they opened the doors.

15 Q. Do you recall approximately when that
16 vote occurred, the first vote?

17 A. I know it was in February of 2018.
18 Exact date, I can't give you.

19 Q. Do you recall any managers or
20 supervisors holding any meetings about the union
21 around that time with employees?

22 A. A couple of days before the vote, they
23 bought us breakfast and they wanted us all in
24 the break room to talk about the union.

25 Q. And who spoke at that meeting?

1 A. Bo Bogardus.

2 Q. What do you recall from that meeting
3 Mr. Bogardus?

4 A. Well, he told us that he has handled
5 other unions before and he is going to protect
6 us from the union because they just want to take
7 our dues and he also said at the end that if the
8 union does win, that he is just going to close
9 down the store and let everybody go.

10 Q. How long do you recall that meeting
11 lasting?

12 A. 15 minutes.

13 Q. After the union election, did you have
14 any conversations with Mr. Bogardus regarding
15 discipline?

16 A. He called me into the office to lay me
17 off. He did that to a couple other guys. He
18 showed he a paper and a box. He never let me
19 touch it. He said this is your writeup, and he
20 pulled it back and then he just showed me some
21 pictures of some machines I said I checked in,
22 that they are not going to write me up this
23 time. This is my freebee and then we talked
24 about why do I want to be from the union. I
25 told him I wanted a pension.

1 Q. And when relative to the union vote
2 when did this conversation that you are
3 referencing with Mr. Bogardus take place?

4 A. The second one or the first one? The
5 first one was before the vote.

6 Q. I am talking about the one with the
7 discipline that you just talked about.

8 A. It was within 30 days because he took
9 over the store and he was our manager for like a
10 month before that.

11 Q. And where did that conversation take
12 place?

13 A. In the manager's office.

14 Q. Was anybody else present besides you
15 and Mr. Bogardus?

16 A. Chris Pender.

17 MR. WIESE: Nothing further.

18 JUDGE ROSAS: Charging Party, anything?

19 MR. RYAN: No, your Honor. Thank you.

20 JUDGE ROSAS: Cross?

21 MS. HILL: Yes, sir. Do you have
22 anything to give me?

23 MR. WIESE: Yes.

24 JUDGE ROSAS: Off the record.

25

1 (Whereupon, a discussion was had
2 off the record.)

3 JUDGE ROSAS: Okay. Cross examination?

4 CROSS EXAMINATION

5 BY MS. HILL:

6 Q. Mr. Gutierrez, I am Patricia Hill. I
7 represent the respondent Sunbelt Rentals in this
8 matter and the judge has given me permission to
9 ask you some questions based on the questions
10 you were asked by Mr. Wiese.

11 I would appreciate it, sir, if you
12 could just speak a little bit louder. I am
13 getting advanced in years and I am just having a
14 little bit problem hearing you, sir. Okay?

15 A. Yeah.

16 Q. Okay. Thank you, sir. When you first
17 started working at Sunbelt, was Katie Torgerson
18 your profit center manager?

19 A. She hired me.

20 Q. Did you receive any discipline from Ms.
21 Torgerson?

22 A. I have been verbally but I have never
23 been written up.

24 Q. At some point in 2019, early in 2019,
25 do you recall a profit center wide meeting

1 regarding the death of a Sunbelt employee in
2 Florida?

3 A. Yes, ma'am.

4 Q. And did all of the employees at the
5 profit center in Franksville have to attend this
6 meeting?

7 A. Yes.

8 Q. Was that meeting referred to as a
9 safety stand-down meeting?

10 A. Yes.

11 Q. And who spoke at that meeting, sir?

12 A. Bo.

13 Q. Anyone else?

14 A. Nothing. Just Bo and we watched a
15 video.

16 Q. And you watched a video regarding
17 safety? Verbal, please.

18 A. Yes.

19 Q. Okay. Thank you. Did -- Was Mr.
20 Anderson the profit center manager at the time?

21 A. Yes.

22 Q. Did Mr. Bogardus and Mr. Anderson
23 indicate during that meeting that safety was a
24 No. 1 concern?

25 A. I am going to have to stop you there

1 because that's a case pending that I can't
2 answer right now. I got a case pending that I
3 can't answer that question.

4 MS. HILL: Okay. Your Honor --

5 JUDGE ROSAS: Well, Counsel, is this
6 related to the direct examination?

7 MS. HILL: It sure is.

8 JUDGE ROSAS: Just give me a topic.

9 MS. HILL: He was talking about broke
10 rules. He was terminated. Then after that he
11 started talking about all the other discipline.
12 I was going to go into the reason for his
13 termination and by the way, it's my
14 understanding, Mr. Ryan, that the appeal was
15 denied, correct?

16 MR. WIESE: His termination is not at
17 issue in this case.

18 MS. HILL: Well, he is giving the
19 impression, sir, that there was no justified
20 reason for his termination and it was all
21 related to the discussions he had with various
22 supervisors about his union's position -- union
23 position, excuse me.

24 JUDGE ROSAS: Well, he was terminated.

25 MS. HILL: Far safety violation.

1 JUDGE ROSAS: That's not before us
2 unless you want to somehow tie any of that to
3 the notion of bias.

4 MS. HILL: Well, yes, sir.

5 JUDGE ROSAS: So...

6 MS. HILL: He gave the impression, sir,
7 on direct examination that he was terminated.
8 Then he starts talking about, oh, Bo talked to
9 me and Mr. Bogardus and Mr. Anderson spoke to me
10 and, you know, they were asking about my union
11 position and things like that. Well, that
12 indicates that his entire termination was not
13 justified, and I am trying to you might say
14 impeach his testimony regarding that because it
15 was a very justified termination.

16 JUDGE ROSAS: The objection is
17 sustained with respect to that rationale for a
18 line of questioning. If you can articulate to
19 me some basis for pursuing possible bias, that's
20 a different story but you'll have to demonstrate
21 that to me; but we just had that as an event,
22 terminated, nothing else. Nothing else in
23 relation to that and that's not a charge in this
24 case.

25 MS. HILL: And he also doesn't have a

1 case pending.

2 JUDGE ROSAS: That's not before me but,
3 again, if you can figure out some aspect of
4 might bear on bias, I'll listen to it.

5 BY MS. HILL:

6 Q. Okay. So, Mr. Gutierrez, you were
7 terminated for violating a major safety rule,
8 correct?

9 A. Yes. That's true.

10 Q. And that termination occurred after
11 several what you allege are conversations with
12 Mr. Bogardus and Mr. Anderson regarding your
13 union feelings, correct?

14 A. It is not correct. That when I got
15 terminated for was instant termination,
16 supposedly --

17 Q. Was what?

18 A. Automatic termination, right then and
19 there. They terminated me six days later
20 supposedly for -- I don't even know if they
21 terminated because like I got a case pending but
22 it's not about me being terminated. It's about
23 what happened after I was terminated. It's
24 something that has nothing to do with you.

25 Q. Okay.

1 A. It's for my surgery. They terminate
2 the day before my surgery. They just cut me
3 off. I got two hernias at work. I can't talk
4 about that. That's what I am trying to say.
5 It's got something else.

6 Q. All right. With respect to Mr.
7 Anderson, did Mr. Anderson do anything with
8 respect to your employment that you show -- that
9 indicate to you that he did not want you to be
10 employed there, sir?

11 A. Well, they came at me they started
12 making it hard. They gave me eight forklifts to
13 change six foot forks out to put four foot forks
14 on them and they had to go out the next morning.

15 Q. Okay. Just a moment. Eight forklifts
16 did you say?

17 A. Yes. It was for the Billy Joel
18 concert. They all had six foot forks. They
19 wanted all the forks off on the skid and
20 strapped. I had just finished eating lunch and
21 they wanted me to put four footers on there and
22 when I asked for help, it was two hours before
23 they closed, they said they can't get nobody to
24 help me. The other guys weren't doing nothing.
25 They just didn't want nobody to help me. That's

1 what I am talking about.

2 Q. Who were the other people?

3 A. I asked for Al. Al was working on a
4 gator that wasn't going nowhere. He said I
5 can't take Al. Look what he is doing. Kyle was
6 sitting right next to him. He said Kyle can't
7 help you either. That was Chris Pender that
8 told me that. He said I can't pull anybody off
9 to help you.

10 They were making it so somebody wants
11 to quit but we didn't quit. We just kept trying
12 to get past this stuff.

13 Q. Are you saying that Al and Chris were
14 not working on the pieces of equipment -- Just
15 let me finish.

16 Were Al and Chris working on the pieces
17 of equipment that Mr. Pender and Mr. Anderson
18 said they were working on?

19 A. Well Chris is Mr. Pender, so he was in
20 his office sitting with Kyle and Al was working
21 on the gator that was broken down for months.
22 It wasn't on no schedule. It was just a little
23 slow so he was keeping busy.

24 Q. Just so the record is clear, sir, how
25 long after it was determined that you had

1 violated a major safety rule were you
2 terminated?

3 A. A month from that -- from that job, a
4 month.

5 Q. Okay. Do you know how it came about
6 that Sunbelt learned that you had violated a
7 safety rule?

8 MR. WIESE: Objection. Relevance.

9 THE WITNESS: I wanted --

10 JUDGE ROSAS: Hold on. Hold on.

11 THE WITNESS: I want to answer the
12 question because I didn't know I violated the
13 safety rule.

14 MR. WIESE: Hold on. Hold on.

15 JUDGE ROSAS: I don't see the
16 relevance, Counsel.

17 MS. HILL: Okay.

18 JUDGE ROSAS: He was terminated and he
19 has given you the basis.

20 MS. HILL: Well, sir, I was trying to
21 figure out what he had said.

22 JUDGE ROSAS: You asked him the basis.

23 MS. HILL: Right, but he had said
24 something. I was trying to figure out if he
25 said it was a month later that he had --

1 JUDGE ROSAS: Right. He said a month
2 later after the -- safety infraction, safety
3 infraction, right?

4 MS. HILL: That's what I was trying to
5 clarify and then he started talking about it.

6 JUDGE ROSAS: Okay. Okay.

7 BY MS. HILL:

8 Q. You also said that Mr. Bogardus gave a
9 speech prior to the election, correct?

10 A. Before the election, yes.

11 Q. Excuse me. Before the election. And
12 in that speech Mr. Bogardus said that the union
13 wanted to take your money for dues, correct?

14 A. He said that he was going to protect us
15 from the union. All the union wants to do is
16 take our money, get our dues. He told us about
17 two other companies that he fought the union
18 with and he wasn't going to let the union get in
19 this company. It was a long speech. It was
20 trying to deter us from voting for the union two
21 days before the vote. This was before the vote
22 trying to get us not to vote, but he didn't tell
23 us not to vote. He just made it sound bad.

24 Q. All right. Then and I apologize. I
25 was trying to understand what you said about

1 papers up on the wall. Did you say there were
2 papers up on the wall in two places?

3 A. There was one in the break room and
4 there was one on the walk-through doors coming
5 from the shop to the office. It was for the
6 revote. They had got a revote to put the
7 petitions up. There was going to be a revote.

8 Q. One in the break room --

9 A. One through the walk-in doors when you
10 come in from the --

11 Q. The swinging doors?

12 A. Yeah.

13 Q. And up to the time of your termination,
14 sir, did Mr. Anderson prohibit you from -- stop
15 you from having any benefits that any other
16 employee at Sunbelt could have?

17 A. Well, that's just hearsay. So I am not
18 going to answer the question. We didn't get any
19 benefits at that store. Every other store in
20 Wisconsin got a raise. We didn't see nothing.

21 Q. Okay.

22 A. That was for sure.

23 Q. Okay. But you did get some special
24 money for hardship because of some --

25 A. I have to apply for it with corporate.

1 Q. Okay. And it was Mr. Anderson who
2 suggested to you to do that, correct?

3 A. It was Rebel, HR, she was there but he
4 is the one that went through with the final
5 agreement with the paperwork that helped me out.

6 Q. So he helped you prepare the paperwork.
7 Was that wrong for him to do that?

8 A. I didn't say everything they did was
9 wrong. I never said that. They were good
10 people. It's just they don't like the union and
11 for the record, I still like Sunbelt. It's a
12 good company. It's just the new management that
13 came in after Katie, they weren't there to
14 manage us. They were there to regulate the
15 union.

16 Q. They were there to what?

17 A. They were regulating us ever since we
18 work the union.

19 Q. That's your opinion?

20 A. We have been working --

21 JUDGE ROSAS: Sir, there is no
22 question.

23 MS. HILL: No question pending. Move
24 to strike.

25 JUDGE ROSAS: The last part is

1 stricken.

2 MS. HILL: Thank you, sir.

3 BY MS. HILL:

4 Q. And you mentioned Gary --

5 A. Gary Stamm.

6 Q. -- Stamm. He was a member of the unit,
7 correct?

8 A. Him and Mario Rivera, yes.

9 MS. HILL: Okay. Thank you. Okay. No
10 further questions. Thank you, Mr. Gutierrez.

11 JUDGE ROSAS: Any redirect?

12 MR. WIESE: Not from General Counsel,
13 your Honor.

14 JUDGE ROSAS: Charging Party, anything?

15 MR. RYAN: Just a second, your Honor.

16 CROSS EXAMINATION

17 BY MR. RYAN:

18 Q. Towards the end of your testimony, you
19 mentioned you applied for some hardship benefits
20 from Sunbelt. Can you help me understand that a
21 little more?

22 A. Well, I am going through bankruptcy and
23 they cut our hours. We weren't making that much
24 money and I was complaining about the hours and
25 Rebel was there, HR was there and she told me I

1 could help you with that because I got a
2 handicapped kid and my girl was disabled. She
3 was in the hospital and at the same time I had
4 just told them I had a hernia. I had a bubble
5 right here and she helped me with that, so she
6 help me out with my bills.

7 Q. Rebel was at the office on that day?

8 A. She was at the office on that day.

9 Q. And if you know, is this a specific
10 benefit that Sunbelt offers to anybody?

11 A. I don't know nothing about it. They
12 just told me they had it and that they could
13 help me.

14 Q. Did you fill out a form?

15 A. She faxed me some forms and Mr. Bryan
16 helped me fill them out.

17 Q. And when about was this?

18 A. I am going to say it's got to be
19 between March and June. March -- yeah, between
20 March and June somewhere in between that time
21 right there.

22 Q. Of 2019?

23 A. Yeah.

24 MR. RYAN: Nothing further. Thank you.

25 JUDGE ROSAS: Any follow up?

1 MS. HILL: Yes, sir.

2 RE CROSS EXAMINATION

3 BY MS. HILL:

4 Q. You referred to Sunbelt cutting the
5 hours. Sunbelt had to reduce the work hours for
6 the mechanics and the drivers because of the
7 reduced benefit -- reduced business for the
8 location, correct?

9 A. That's what they said. We were still
10 busy.

11 Q. Did you look at any of the --

12 A. I am the one that stages all the
13 orders. Sometimes we would so busy, we didn't
14 have enough equipment. We had to get it from
15 Waukesha.

16 Q. But, sir, you had to get equipment from
17 Waukesha --

18 A. Another store because we didn't have
19 enough.

20 Q. Right. But how often?

21 A. From getting stuff from other stores
22 would be sometimes a couple times a week.

23 Q. And that happened in 2018?

24 A. That happened in 2019. 2018 -- we were
25 busy. Before we voted for the union, we had

1 more work than we could handle.

2 Q. But starting in March of 2019, is
3 March, April busy seasons for Sunbelt?

4 A. Yes. Well, actually, yeah, Sunbelt, as
5 long as there is no snow.

6 Q. As long as there is no snow?

7 A. It's basically year around but with the
8 snow, it cuts down on other equipment that can't
9 go out in the snow.

10 Q. Would you agree that Sunbelt's busiest
11 season is from approximately May through
12 October?

13 A. No.

14 Q. No?

15 A. Some years are better.

16 Q. Some years are better. Were you aware
17 of the bannering that the union was doing?

18 A. Yeah. They let us know. Those guys
19 like Tyler and -- they told us --

20 THE REPORTER: I'm sorry, your Honor.

21 JUDGE ROSAS: Can you repeat that?

22 THE WITNESS: Those guys Tyler and Greg
23 would let us know at their job sites because if
24 you go out to the job sites that were being
25 bannered, they talked about it.

1 BY MS. HILL:

2 Q. Did they tell you what the result was
3 of the bannering at their job sites?

4 MR. WIESE: Objection. Hearsay.

5 JUDGE ROSAS: Sustained unless that's
6 going to be corroborated. You can -- There is
7 no question.

8 MS. HILL: Thank you.

9 JUDGE ROSAS: That's been sustained.

10 MS. HILL: Okay. Thank you, Mr.
11 Gutierrez.

12 JUDGE ROSAS: Anything else.

13 MR. WIESE: No. Not from General
14 Counsel.

15 JUDGE ROSAS: Thank you, sir. You are
16 excused. Please do not discuss your testimony
17 with anyone until you are advised otherwise by
18 counsel, all right?

19 THE WITNESS: Like I said I am from
20 California. I don't know nobody. I know my
21 girl and my kid and that's it.

22 (Whereupon, a discussion was had
23 off the record.)

24 JUDGE ROSAS: All right. On the
25 record. Next witness.

1 MR. WIESE: Counsel calls Katie
2 Torgerson to the stand.

3 JUDGE ROSAS: Please raise your right
4 hand.

5 (Witness sworn.)

6 JUDGE ROSAS: Please have a seat. If
7 you can state and spell your name and provide us
8 with an address.

9 THE WITNESS: Sure. It's Katherine
10 K-A-T-H-E-R-I-N-E, last name Torgerson,
11 T-O-R-G-E-R-S-O-N. Address is 7795 South Drexel
12 Ridge Way, Oak Creek, Wisconsin 53154.

13 KATHERINE TORGERSON,
14 after being first duly sworn, deposeth and saith
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. WIESE:

18 Q. Ms. Torgerson, are you appearing here
19 today pursuant to a subpoena?

20 A. Yes.

21 Q. Where do you currently work?

22 A. Bob Cat Plus.

23 Q. Where did you work prior to Bob Cat
24 Plus?

25 A. Sunbelt Rentals.

1 Q. What did you do at Sunbelt Rentals?

2 A. I started in business development and
3 then I became a PCM.

4 Q. What's a PCM?

5 A. Profit center manager.

6 Q. How long were you in business
7 development for?

8 A. Approximately two years, maybe a little
9 more.

10 Q. What years or what period of time?

11 A. 2015. I believe June of 2015 until
12 sometime between May and September of 2017.

13 Q. And what period of time were you the
14 profit center manager at Sunbelt?

15 A. That would be the May or September
16 of 2017 I believe until March of 2018.

17 Q. Which profit center were you or which
18 profit center were you the manager of?

19 A. Franksville, Wisconsin.

20 Q. What were your responsibilities as the
21 profit center manager at Franksville, Wisconsin?

22 A. Basically just overseeing the
23 operations of the store, hiring employees,
24 training employees, daily operations.

25 Q. Did you have disciplinary authority

1 over employees?

2 A. Yes.

3 Q. Who did you supervise at the
4 Franksville location?

5 A. The employees, the drivers, mechanics,
6 sales staff, counter staff.

7 Q. Who did you report to?

8 A. The district manager.

9 Q. Who was the district manager when you
10 started as the profit center manager at
11 Franksville?

12 A. Mark Lancort.

13 Q. Did that change?

14 A. Yes.

15 Q. Who replaced Mr. Lancort?

16 A. Bo Bogardus.

17 Q. Do you recall how long Mr. Bogardus was
18 your supervisor?

19 A. I don't.

20 Q. While you worked at Franksville, what
21 types of equipment did the facility rent out?

22 A. A majority of the catalog that they
23 offer, boom lifts, scissor lifts, skid-steers,
24 min excavators, backhoes, excavators,
25 dehumidifiers, saws. There is a large array of

1 equipment.

2 Q. What services did the Franksville
3 facility provide to customers?

4 A. Parts, sales of equipment as well as
5 parts servicing of equipment, renting of
6 equipment.

7 Q. Did Franksville provide delivery
8 services?

9 A. Yes.

10 Q. What division does the Franksville
11 facility fall under or did it fall under when
12 you worked there?

13 A. General tool.

14 Q. Were you involved in the opening of any
15 general tool facilities?

16 A. Yes.

17 Q. Which facilities?

18 A. De Pere, Wisconsin; Weston, Wisconsin.
19 I went to Minneapolis but I did not stay and
20 open and then Franksville, as well as a remodel
21 in Sun Prairie.

22 Q. Over what period of time were you
23 opening the stores?

24 A. Between 2013 and up until the time
25 Franksville opened and once I opened Franksville

1 or we opened Franksville, then I assumed the
2 role of the PCM and just stayed on there.

3 Q. Did these facilities rent the same type
4 of equipment as the Franksville facility?

5 A. Yes.

6 Q. Did they provide the same types of
7 services?

8 A. Yes.

9 Q. Was there any facility that you opened
10 that did not provide the same types of equipment
11 and services as the Franksville facility?

12 A. Nowhere I worked, no.

13 Q. Are you aware of a union organizing
14 campaign that took place at the Franksville
15 facility?

16 A. Yes.

17 Q. When did you become aware of that
18 campaign?

19 A. I believe it was February of 2018.

20 Q. How did you become aware of that union
21 campaign?

22 A. They came in and basically just advised
23 that the employees had petitioned to organize a
24 union and let us know.

25 Q. When you say "they," who are you

1 talking about?

2 A. Two representatives from the 139.

3 Q. Do you know their names?

4 A. Mike but I don't know anybody else.

5 Q. Did you have any knowledge of the union
6 organizing prior to --

7 A. I did not.

8 Q. Okay. What did you do in response to
9 the Local 139 representatives?

10 A. I contacted my supervisor.

11 Q. Who was your supervisor at that time?

12 A. Bill Bogardus.

13 Q. How did you contact Mr. Bogardus?

14 A. Via phone.

15 Q. What do you recall from that initial
16 conversation with Mr. Bogardus?

17 A. I recall making the call and then we
18 discussed -- I don't know anything in detail
19 what went on on that phone call. We discussed
20 just advising HR and having conversations. He
21 told me that he'd get back to me once he talked
22 to HR and his boss and whatnot.

23 Q. Did you continue to talk to
24 Mr. Bogardus regarding the union after this
25 initial conversation?

1 A. Yes.

2 Q. How frequently?

3 A. I would say daily.

4 Q. And during the conversations that you
5 had with Mr. Bogardus, what do you recall
6 talking about?

7 A. Employee I guess morale is one. Was
8 there any behavior issues. Were people coming
9 in and doing their jobs. Was there any
10 congregating. Things of that nature. Was it
11 business as usual or was there a disruption.

12 Q. And after your initial conversation
13 about the union organizing, did Mr. Bogardus
14 visit the Franksville facility?

15 A. Yes.

16 Q. When did he start doing that?

17 A. I would say within the week of being
18 notified.

19 Q. How frequently did he visit the
20 facility between when you first talked to him
21 about the union and the union vote?

22 A. I don't recall exactly. But there was
23 a long stretch of time or a week or longer weeks
24 where he would come in and sit in the conference
25 room every day.

1 Q. Was this more frequently than
2 Mr. Bogardus had visited the facility in the
3 past?

4 A. Yes.

5 Q. How frequently had he visited the
6 facility prior to your bringing up the union
7 with him?

8 A. Not very often.

9 Q. Can you quantify that at all?

10 A. Weeks would go by without seeing him.

11 Q. Do you recall having any conversations
12 with Mr. Bogardus about what would happen if the
13 union won the election at the Franksville
14 facility?

15 A. There was comments that were made that
16 were would just kind of come out that he
17 indicated at one point that we'd close -- we'd
18 close the store.

19 Q. Did Mr. Bogardus say that to you one
20 time or more than one time?

21 A. There was multiple occurrences.

22 Q. Do you recall how many times
23 approximately he said that?

24 A. I don't, no.

25 Q. Was it more or less than five?

1 A. More than five.

2 Q. Are there any specific instances that
3 you can recall when he brought this up?

4 A. Not specific to a date or anything, no.

5 Q. What about more generally, any
6 circumstances conversations?

7 A. Yeah. When we'd talked in the
8 conference room and whatnot and I know there was
9 commentary made in front of other employees as
10 well as in some management meetings in front of
11 other managers.

12 Q. When Mr. Bogardus would talk to you
13 about the union, how would he act?

14 A. I would say he is a very passionate
15 man, very boisterous and loud so I would say in
16 that matter, very, very loud and boisterous
17 about it.

18 Q. Did he appear upset about the union?

19 A. Angry might be -- I guess that could be
20 upset, but not happy about it.

21 Q. Over what period of time was Mr.
22 Bogardus make these remarks about the union?

23 A. From the time that we were notified of
24 the signatures until the time he made his
25 decision.

1 Q. Did you have any conversations with
2 Mr. Ryan Bogardus regarding how the union might
3 affect your employment at Sunbelt?

4 A. Yes.

5 Q. And when was the first conversation you
6 had about that?

7 A. A couple weeks after he had come in so
8 within I'd say two to three weeks when he was at
9 the location, I had asked him if I was going to
10 lose -- or if I was going to be fired.

11 Q. Okay. And where were you when this
12 conversation took place?

13 A. We were in the Franksville facility and
14 it would have been it was right near my office.

15 Q. Was anybody else present for that
16 conversation?

17 A. No.

18 Q. And what do you recall being said?

19 A. He had indicated that the union wasn't
20 helping my cause.

21 Q. Was this before or after the union
22 election?

23 A. Before.

24 Q. What about after the union election?
25 Did you have any conversations with Mr. Bogardus

1 about the union and how it would affect your
2 employment?

3 A. Just when I was let go.

4 Q. When did that happen?

5 A. March of 2018.

6 Q. How did you become aware that you were
7 being let go?

8 A. I had made an offer to an employee or
9 candidate and I received a phone call from the
10 candidate explaining to me and questioning me
11 why he received notification and a call advising
12 that the offer had been rescinded and at that
13 point I called Bo Bogardus to question what was
14 going on and I also called Rebel Strohmeier who
15 was our HR manager to question this and at the
16 time I was on the phone with Bo Bogardus, he
17 indicated that he would come see me and discuss
18 it because on the phone call he went into
19 further depth about changing some things with
20 the store and doing some things and we had done
21 the fleet planning and changing the fleet that I
22 had requested to order.

23 Q. And did you have a meeting then with
24 Mr. Bogardus?

25 A. Not about that.

1 Q. Okay.

2 A. He came in and dismissed me.

3 Q. And who was present when you were
4 dismissed?

5 A. Bogardus and Rebel Strohmeier.

6 Q. Where did that meeting take place?

7 A. In the conference room at the
8 Franksville location.

9 Q. What do you recall from that meeting?

10 A. Just going into the conference room and
11 they said that this wasn't easy and
12 unfortunately they needed to let me go.

13 Q. Did Mr. Bogardus or Ms. Strohmeier
14 provide any reason for why you were terminated?

15 A. Wisconsin is an at-will obviously but
16 there was a comment made about how our inventory
17 shortage did not help as well as the union vote.

18 Q. Who stated?

19 A. Bo Bogardus.

20 MR. WIESE: Nothing further.

21 JUDGE ROSAS: Charging Party?

22 MR. RYAN: I don't have any questions.

23 Thank you.

24 JUDGE ROSAS: Cross, Ms. Hill?

25 MS. HILL: Yes, sir.

1 MR. WIESE: Would you like affidavits?

2 MS. HILL: Yes. I was just going to
3 ask if there was --

4 JUDGE ROSAS: Off the record.

5 (Whereupon, a short recess was
6 taken.)

7 JUDGE ROSAS: Respondent, cross
8 examination?

9 CROSS EXAMINATION

10 BY MS. HILL:

11 Q. Ms. Torgerson, as you know, I am Pat
12 Hill. I represent the respondent Sunbelt
13 Rentals, and I am given permission now to ask a
14 few follow-up questions on some of the
15 statements that you made.

16 I wanted to be sure that the record was
17 clear, when you said that you were involved in
18 the opening of the De Pere profit center, the
19 Waukesha -- I believe you said Waukesha --

20 A. Weston.

21 Q. Oh, Weston location and you mentioned a
22 couple of others, was that in the role of a
23 profit center manager or as business
24 development?

25 A. Business development.

1 Q. Thank you. When you became the profit
2 center manager for the Franksville location
3 let's say in the first year of you being the
4 manager there, do you know what percentage of
5 customer walk-ins you had?

6 A. A lot. I don't know a percentage,
7 though, no.

8 Q. Okay. Did you ever discuss that with
9 Mr. Bogardus?

10 A. Initially it would have been with Mark
11 Lancort and then with Bo Bogardus, both of them,
12 yes.

13 Q. Do you know a Dan Atwell?

14 A. Yes.

15 Q. Did he ever discuss your walk-in
16 business?

17 A. Yes.

18 Q. And what did he discuss with you about
19 the walk-in business?

20 A. He had come to the location to do a
21 parts reset and at that time while Bo Bogardus
22 was at the location, monitoring and whatnot, Dan
23 Atwell had suggested the idea of some sort of
24 drive-through bay for customers to come in
25 through the shop to get equipment loaded and

1 whatnot, so a little reorganization of the yard
2 and the shop itself.

3 Q. Okay. And was any of that implemented?

4 A. Not prior to my leaving, no.

5 Q. Okay. Did Mr. Atwell have any
6 suggestions regarding the big equipment at your
7 profit center?

8 A. That all came in the conversation of
9 reducing the size of equipment that would be
10 offered to -- and not have anything larger than
11 a certain size forklift or certain size boom
12 left, et cetera.

13 Q. When you say a certain size, do you
14 recall what size, ma'am?

15 A. I believe the boom lift was nothing
16 bigger than 60-foot and the forklift was nothing
17 bigger than a 6,000-pound shooting boom
18 forklift, variable forklift, whatever term they
19 are using or everybody is using these days.

20 Q. At the time of the union election, how
21 did the hourly rate for your mechanics and
22 drivers compare to the hourly rate for the other
23 profit centers in Wisconsin?

24 A. I had the highest paid staff in the
25 state.

1 Q. And you also had some testimony about
2 making an offer to a candidate?

3 A. Uh-huh.

4 Q. For what position, ma'am?

5 A. Technician.

6 Q. And then you said the offer was
7 rescinded but I wasn't sure if you meant it was
8 Rebel or Bo.

9 A. Rebel made the call to the candidate to
10 rescind the offer.

11 Q. Did you talk to Rebel to get an
12 explanation why it was rescinded?

13 A. Yes.

14 Q. And what, if anything, was her
15 response?

16 A. That they do not rescind offers often,
17 however, in this case, it was rescinded because
18 Jason Mayfield did not approve of the position
19 and when I asked further and drilled into it
20 because I had the approvals, it was done through
21 requisition which was approved and we had the
22 conversation of the offer that I was going to
23 make and I was given the approval, Bo Bogardus
24 had a further conversation and indicated to me
25 that he misunderstood Jason. When Jason said

1 no, he thought he said yes and so on and so
2 forth.

3 Q. Okay. So the approval that you saw for
4 this candidate was it from Mr. Bogardus or was
5 it from Mr. Mayfield?

6 A. I went to Bo Bogardus for approval and
7 then continued to make a verbal offer to the
8 candidate and make the, you know, formal offer
9 to the candidate at which time he was contacted
10 at a later time indicating the offer was being
11 rescinded.

12 Q. You also mentioned something about an
13 inventory shortage. Did they explain what the
14 inventory shortage was?

15 A. I was present for it, so I know what it
16 was. It was our annual inventory and it was
17 off.

18 Q. By how much?

19 A. I don't recall the exact amount. If I
20 had to guess in my recollection, it was probably
21 around \$16,000.

22 Q. And had you had -- was that your first
23 inventory as profit center manager?

24 A. No.

25 Q. Was it the second one you had as a

1 profit center manager?

2 A. No.

3 Q. Third one?

4 A. No.

5 Q. So you have --

6 A. I would say there were at least --
7 there were three for sure, maybe -- I am not
8 sure if there were more, but, yes.

9 Q. Did you have any inventory shortages
10 for the previous inventory counts?

11 A. Yes.

12 Q. What dollar amount?

13 A. I don't recall.

14 Q. And when you refer to Mike from the
15 139, referring to the gentleman in the blue
16 shirt at the end of the table there?

17 A. Yes.

18 MS. HILL: Okay. No further questions
19 at this time, your Honor.

20 JUDGE ROSAS: Any follow up?

21 MR. WIESE: Yes, your Honor, briefly.

22 REDIRECT EXAMINATION

23 BY MR. WIESE:

24 Q. There was some discussion about an
25 individual named Dan Atwell?

1 A. Yes.

2 Q. What is his position?

3 A. I believe operations manager.

4 Q. Had you had any dealings with Mr.

5 Atwell prior to the union --

6 A. Yes.

7 Q. -- election? Okay.

8 A. He was my immediate supervisor when I
9 first started with the company.

10 Q. The conversations about changing the
11 type of equipment at the Franksville facility,
12 did those occur -- did those start before or
13 after you became aware of the union?

14 A. After.

15 Q. With respect to the offer that we were
16 talking about, the rescinded offer, do you
17 recall that testimony?

18 A. Yes.

19 Q. What -- the employee that you had made
20 an offer to, what position was that?

21 A. Technician.

22 Q. Is that different from a mechanic?

23 A. That's the same.

24 Q. During your time working at
25 Franksville, did you rescind any other offers or

1 were any other offers rescinded besides the
2 offer for this technician?

3 A. Not through -- not at my location, no.
4 I don't know about any others.

5 MR. WIESE: Nothing further.

6 JUDGE ROSAS: Charging Party, anything?

7 MR. RYAN: Just briefly.

8 CROSS EXAMINATION

9 BY MR. RYAN:

10 Q. What was the reason for the offer being
11 rescinded, if you know?

12 A. That the regional vice president did
13 not approve of the offer and when the district
14 manager contacted him to go over the offer that
15 I was extending to the candidate, there was a
16 misunderstanding that he thought he said yes but
17 he said no in a phone call after that.

18 Q. Other than do you know why the district
19 manager did not approve or regional manager?

20 A. I do not know why. I never had a
21 conversation with the regional manager about it
22 personally.

23 MR. RYAN: I don't have anything
24 further right now. Thank you.

25 JUDGE ROSAS: Anything else?

RECROSS EXAMINATION

BY MS. HILL:

Q. The Dan Atwell report, was that a verbal report or was that a written report?

A. What report?

Q. About moving the equipment, changing, you know --

A. It was just a conversation.

Q. Conversation.

A. Correct.

Q. Do you recall if he ever had a written report?

A. I never saw one, no.

Q. And this conversation, do you have a date for when it was?

A. No. It was during the time that they came up to do the parts reset and he was in the conference room with another gentleman and there was ideas being thrown around about how to help with the large walk-in traffic and again, with the drive-through bay and then potentially limiting the size of the employment.

Q. And you said that Mr. Atwell was your supervisor at one point?

A. When I started with the company, he was

1 -- he was operations manager. He was
2 essentially the one that hired me and I reported
3 to him for my assignments.

4 Q. Did you have any problems working with
5 him during your career at Sunbelt?

6 A. No.

7 MS. HILL: No further questions.

8 JUDGE ROSAS: Anything else?

9 MR. WIESE: No, your Honor.

10 MR. RYAN: No, your Honor.

11 JUDGE ROSAS: Thank you, ma'am. You
12 are excused. Please do not discuss your
13 testimony with anyone until you are advised
14 otherwise by counsel, all right? Go off the
15 record.

16 (Whereupon, a discussion was had
17 off the record.)

18 JUDGE ROSAS: On the record. Next
19 witness.

20 MR. WIESE: Counsel calls Kyle
21 McKellips to the stand.

22 JUDGE ROSAS: Raise your right hand.

23 (Witness sworn.)

24 JUDGE ROSAS: Please have a seat.
25 State and spell your name and provide us with an

1 address.

2 THE WITNESS: Okay. My name is Kyle
3 McKellips, M-C-K-E-L-L-I-P-S. And my address is
4 8420 204th Circle in Bristol, Wisconsin.

5 KYLE McKELLIPS,
6 after being first duly sworn, deposeth and saith
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. WIESE:

10 Q. Mr. Ryan McKellips, where do you
11 currently work?

12 A. I currently work for Michael's in their
13 foundations department.

14 Q. Where did you work prior to Michael's?

15 A. Sunbelt Rentals in Franksville,
16 Wisconsin.

17 Q. What period of time did you work for
18 Sunbelt Rentals in Franksville?

19 A. From January 2018 until August 10,
20 2019.

21 Q. What did you do for Sunbelt?

22 A. I -- I was their road technician so I
23 would go out into the field and do the repairs
24 for them as necessary what I could repair out on
25 site or also do services for them and I would

1 also do work in the shop when I was available
2 for it.

3 Q. Did you work with anyone else in the
4 shop?

5 A. It was usually just giving them a hand
6 if they needed it or helping them look at a part
7 but typically everybody that was on the shop
8 floor.

9 Q. Who else was on the shop floor?

10 A. It would be Mario Rivera, Ray
11 Gutierrez, Al Romanowski, Chris Pender.

12 Q. What types of equipment did you work on
13 for Sunbelt?

14 A. If Sunbelt rented it, I would work on
15 it if it was at our shop and needed to be
16 prepped for rental so that could be as simple as
17 a drill that needed to be checked in or some
18 lawn equipment, lawnmower, an aerator, all the
19 way up to a loader, excavator, skid-steers,
20 scissor lifts, everything they had.

21 Q. And generally what types of work were
22 you doing on the equipment that you worked on?

23 A. A lot of services, oil -- basic oil
24 changes and troubleshooting for equipment,
25 troubleshooting and repair of equipment that was

1 broken down either while being used or due to
2 wear and tear on it.

3 Q. Who did you report to?

4 A. I reported to Chris Pender.

5 Q. How did your employment end at Sunbelt?

6 A. It ended with them bringing me to the
7 conference room so they called me back to the
8 shop. I was out on a service call at the time
9 and said that we needed to have a meeting. When
10 they brought me back in, brought me into the
11 conference room at the Franksville store and
12 told me that they were going to be restructuring
13 the shop and that they no longer needed any
14 mechanics.

15 Q. Okay. Who called you?

16 A. That was Bryan. Bryan called me.

17 Q. And do you know what was Bryan's
18 position?

19 A. He was the branch manager.

20 Q. And then when you arrived at the store,
21 where did you go?

22 A. I waited in the front area of the sales
23 area for about an hour and then they brought me
24 into the conference room that was in the front
25 area.

1 Q. When you say "they," who?

2 A. That was Bryan and Bo that was in the
3 meeting in person.

4 Q. Do you know Bo's last name?

5 A. I can't really say it but I think it
6 was Bogardus.

7 Q. Was anybody else present in the
8 meeting?

9 A. There was Bryan, there was Bo and then
10 Rebel was on a phone.

11 Q. Were there any union representatives
12 present at the meeting?

13 A. No.

14 Q. What do you recall from the meeting?

15 A. They brought me in. They -- like I
16 said, they said that they were restructuring the
17 store, that they no longer needed equipment --
18 needed any mechanics because of this
19 restructure. That they were no longer going to
20 be delivering equipment. That they were only
21 going to rent small tools, stuff that, what they
22 described to me as with these small tools was
23 stuff that customers could pick up in their
24 vehicle or that they could rent a trailer from
25 us and just take it away. Nothing that needed

1 to be delivered.

2 Q. And who said all of this?

3 A. That was Bryan.

4 Q. Okay. Do you recall Mr. Bogardus
5 saying anything during that meeting?

6 A. We talked for a little while about
7 the -- my tools that were there because all of
8 my tools were in the service truck, about my
9 phone. It was the only phone I was using at the
10 time and it had a lot of personal information on
11 it and I was asking him about if I was able to
12 get information off of it and they told me that
13 I would have to come back at a later time for
14 it.

15 Q. And what about Ms. Strohmeier? Do you
16 recall her saying anything during that meeting?

17 A. She offered -- she said that if need
18 be, I could -- that Sunbelt was really willing
19 to rent an outside storage facility for my tools
20 and move them there if need be. Just asking me
21 to give up my phone, the keys to the shop and to
22 the truck and that I was no longer needed.

23 Q. How long did that meeting last?

24 A. I would say about a half hour, 40
25 minutes.

1 Q. How did the meeting end?

2 A. That was me telling them that I needed
3 to lock up the truck and secure my tools that I
4 had. That I gave them my all the keys. I gave
5 them the phone. They thanked me for all the
6 work I did for them and handed me a letter, I
7 guess just written layoff and send me on my way.

8 Q. Okay. After you were terminated, did
9 you see any Sunbelt trucks out on the road?

10 A. Yes. Between March and June two weeks
11 after, I seen -- oh, I can't remember his name
12 now. Comb-over, Gary, Gary Stamm. That was it.
13 I seen him driving a semi truck on the road.

14 Q. Okay. And where did this occur?

15 A. That was on the freeway on 94 about --
16 it was probably only a few miles south of
17 Highway K going northbound.

18 Q. How far away was that from the
19 Franksville facility?

20 A. It was probably maybe about four or
21 five miles.

22 Q. Who is Gary Stamm?

23 A. He was in charge of dispatch
24 essentially the rental equipment delivery of
25 that store. That was my understanding of his

1 position. He do driving and he would also set
2 up the outside hauling of the store.

3 Q. How could you tell that it was Mr.
4 Stamm driving the truck?

5 A. It was his haircut.

6 Q. How long did you see Mr. Stamm?

7 A. It was just a few moments. I was
8 getting off my exit.

9 Q. Did seeing Mr. Stamm driving a Sunbelt
10 truck did that stand out to you in any way in
11 that time?

12 A. Yes, just because they said they
13 weren't going to be doing any delivering.

14 Q. Was -- Go ahead.

15 A. There wasn't any equipment, but I
16 didn't see any other reason why he would have
17 the semi truck if he wasn't delivering or
18 picking up.

19 Q. Was there a trailer behind the truck?

20 A. Yes.

21 Q. Now, if you were terminated, did you
22 return to the Franksville shop for any reason?

23 A. I returned the next day and I actually
24 managed to pick up my tools. I wasn't very
25 comfortable with them being there with all the

1 chaos that was going on in the store. I
2 returned a few other times after that. I'd say
3 probably a couple weeks after I was terminated,
4 I actually came by because I left some tools
5 behind. I talked to Chris for a little while.
6 He was still there as the service manager.

7 Q. Where did you talk with Chris?

8 A. I talked to him a little bit in the
9 front by the sales and then in the back he was
10 showing me what he was still doing there.

11 Q. When you say in the back, was that in
12 the shop?

13 A. In the service, yeah, in the shop.

14 Q. And when you went back to the shop with
15 Mr. Pender, what did you see?

16 A. A lot of equipment was moved around.
17 Stuff was still getting worked on.

18 Q. What types of equipment did you see
19 getting worked on?

20 A. The first time there was a 50 tillable
21 there that was getting worked on. There was a
22 bunch of scissor that were getting looked at.
23 Skid-steers were getting cleaned.

24 Q. This equipment -- was this equipment in
25 the shop at the time you were terminated?

1 A. No. There was a lot of stuff that was
2 moved around. I think the 50 tillable might
3 have still been in there but it was definitely
4 moved around and it looked like it was getting
5 worked on.

6 Q. Could you tell what type of work was
7 being done on the equipment that you could see?

8 A. The skid-steers were mainly just
9 getting washed from what it looked like but the
10 cabs were up. There was mud that was getting
11 washed out because they get destroyed on rent.
12 There was a scissor lift that had its brakes
13 taken apart because they needed to be cleaned.
14 Other scissor lifts were in the air drying out.

15 Q. Had you worked on the brakes on scissor
16 lifts when you worked at Sunbelt?

17 A. Yes.

18 Q. What about washing skid-steers?

19 A. Yes.

20 Q. And the other work that you described
21 that was being done on the scissor lift, had you
22 done that work?

23 A. Yes.

24 Q. After you and Mr. Pender got into the
25 shop, did you talk to one another?

1 A. Yes. We talked about he apologized for
2 the way things had gone. He gave me my tools
3 back and he told me about how he was still
4 working on equipment. He was stressed out about
5 it because it's a lot to do. Showed me some of
6 the things -- I could only stay for a little
7 bit. I think I was there for maybe 30 minutes.

8 Q. And what did he show you while he was
9 there or while you were there with him?

10 A. The first time he showed me it was
11 mainly stuff like the scissor lifts and we just
12 kind of pointed it out. I think there was a
13 generator there. He was telling me he was
14 getting ready to do a service on it.

15 The second time I showed up, though, he
16 was actively tearing apart a UTV to replace the
17 front drive shafts on it or the half shafts is
18 what I call them.

19 Q. Okay. So the first time you visited
20 the facility, that was -- was that the day after
21 your termination?

22 A. That was probably about a week and a
23 half after I was terminated. The next day I
24 came up I picked up my tools but that was a
25 Friday and nobody had any time to talk.

1 Q. Okay.

2 A. It was chaotic that day.

3 Q. So going back to the second time then
4 that you visited the facility, was that the time
5 when you talked with Mr. Pender about the UTV?

6 A. Yes. So he had it in the shop. It was
7 up on jack stands and he said that the customer
8 had done a lot of damage to it. It was at an
9 Amazon site in Oak Creek and it needed a bunch
10 of new plastic put on it, needed new half shafts
11 put onto it and he was going to be working on it
12 for a while.

13 Q. And what, if anything, else do you
14 recall from your conversation with Mr. Pender
15 that day?

16 A. Mainly that he was stressed out. They
17 were asking a lot of him.

18 Q. Was there any discussion about the
19 Waukesha store?

20 MS. HILL: Objection.

21 JUDGE ROSAS: Sustained. Leading.

22 BY MR. WIESE:

23 Q. Is there anything else that you recall
24 from that conversation with Mr. Pender?

25 A. Not that day, no.

1 Q. Is there a document that would help to
2 refresh your recollection?

3 A. I could possibly look through texts on
4 my phone when I talked to him or --

5 Q. Do you recall giving an affidavit to
6 the --

7 MS. HILL: Objection.

8 JUDGE ROSAS: What was the original
9 question?

10 MR. WIESE: I asked him if there is a
11 document that would help to refresh his
12 recollection and then --

13 JUDGE ROSAS: About what?

14 MR. WIESE: What?

15 JUDGE ROSAS: What was the original
16 question?

17 MR. WIESE: The original question I am
18 asking him if there is anything else that he
19 recalls from his conversation that we have been
20 talking about with service manager Chris Pender.

21 JUDGE ROSAS: Okay. Overruled. Go
22 ahead. He asked you about an affidavit.

23 THE WITNESS: Okay.

24 BY MR. WIESE:

25 Q. Do you recall giving an affidavit to

1 the NLRB?

2 A. Yes. Uh-huh.

3 Q. Do you recall discussing this
4 conversation with Mr. Pender as part of that
5 affidavit?

6 A. I have had a few conversations but yes.
7 That was one of them.

8 Q. Would this affidavit help to refresh
9 your recollection as to that conversation?

10 A. Absolutely.

11 Q. Okay. Mr. McKellips, I am going to
12 have you review Paragraphs 11 and 12 of your
13 affidavit, beginning on Page 3 going over to
14 Page 4.

15 A. Okay.

16 Q. Just review that and let me know when
17 you are done.

18 A. Are you referring to this when it's
19 talking about last Wednesday?

20 Q. I am not going to have you read the
21 affidavit yet into the record.

22 A. Okay.

23 Q. Are you done reviewing that document?

24 A. Absolutely.

25 Q. Okay. Thank you. Mr. McKellips, is

1 your recollection now refreshed as to the
2 remainder of that conversation with Mr. Pender?

3 A. Uh-huh.

4 Q. And so what else do you recall from
5 that conversation?

6 A. Well, actually, there wasn't much more
7 in that conversation but I have called him and
8 talked to him over the phone a few times --

9 Q. Okay.

10 A. -- since that. I know I did talk to
11 him once about, you know, he told me that he was
12 no longer going to be working for the
13 Franksville store and the reason for that is
14 they -- I don't know who it was that said he
15 wasn't being effective enough but he was not
16 getting enough work done is what his
17 understanding was and what he told me, not
18 enough equipment was getting repaired, he wasn't
19 working enough hours. He was salaried, so he
20 was trying to keep it 8- to 10-hour days so that
21 he had time with his family.

22 So the resolution was that he was going
23 to stop being the manager. He was going to go
24 up to the Waukesha store and become a mechanic
25 again, and that they were going to bring

1 somebody else down and what we discussed was
2 potentially two people down to continue working
3 at that shop.

4 Q. When did that telephone conversation
5 occur?

6 A. That was -- that was a few months ago
7 now. I honestly couldn't give auto specific
8 time to that.

9 Q. Okay. I'd like to direct your
10 attention there is a binder of exhibits in front
11 of you there, and I'd like to direct your
12 attention to General Counsel Exhibit 25. Are
13 you on it? I'd like to turn to Page 2, 3 and 4
14 of that document.

15 A. Yes.

16 Q. What's happening in these pictures?

17 A. That's Chris Pender holding a grease
18 gun on Page 2 and he is greasing this skid-steer
19 on Page 3 and it looks like he is just looking
20 over the equipment on Page 4.

21 Q. All right. The grease gun that he is
22 holding, did you use grease guns when you worked
23 for Sunbelt?

24 A. Yes.

25 Q. How often?

1 A. Enough to where I bought my own.

2 Q. If you go to Page 6 of the exhibit,
3 what type of truck is that, the white truck in
4 that picture?

5 A. That is we called it our backup service
6 truck.

7 Q. Did you use that service truck like
8 that when you worked there?

9 A. Yes.

10 Q. How frequently?

11 A. At least I would say 5 to 10 days a
12 month depending on how many hours I would need
13 it to run.

14 Q. If you turn to Page 14, do you
15 recognize that piece of equipment the Vermeer
16 piece of equipment in the middle?

17 A. Yes. That's the Vermeer 12-inch wood
18 chipper.

19 Q. Is that piece of equipment being worked
20 on, can you tell?

21 A. I don't see anybody working on it, but
22 I mean, it's halfway in and out the door so
23 somebody definitely brought it up to do
24 something to it.

25 Q. Is that in the bay in the maintenance

1 shop at the Franksville facility, can you tell?

2 A. Yes.

3 Q. If you look at Pages 16 through 20, is
4 there -- can you tell in any of these pictures
5 is there maintenance work being done?

6 A. On 16 and 17, Chris is working on I
7 believe that's a GR 20 scissor or stack lift.

8 Q. Can you tell what he is doing based off
9 of the pictures?

10 A. He is more than likely checking the
11 water level in the batteries.

12 Q. Is that something that you did when you
13 worked for Sunbelt?

14 A. Yes.

15 Q. Okay. And what about the remaining
16 pictures, 18, 19 and 20?

17 A. I don't know who that is in 18. It's
18 hard to tell, and I don't know what he is doing
19 on the other side of the door on 19, and on 20
20 it looks like Chris is doing a functions check
21 or playing with the controls.

22 Q. Is that something that you did --

23 A. Yes.

24 Q. -- for those types of lifts? If you go
25 to Page 24, do you recognize this piece of

1 equipment?

2 A. Yes. That's a 375 compressor.

3 Q. Is that piece of equipment being worked
4 on?

5 A. Yes.

6 MS. HILL: Objection. You said that
7 piece of equipment. I believe there has been
8 some testimony about two pieces of equipment.

9 BY MR. WIESE:

10 Q. Okay. With respect to Page 24 --

11 MS. HILL: Yes, sir.

12 THE WITNESS: The one in the shop is a
13 375 and the one outside is a lawnmower.

14 BY MR. WIESE:

15 Q. Thank you. With respect to the piece
16 of equipment inside the shop, does that piece of
17 equipment appear to be being worked on?

18 A. Yes.

19 Q. How can you tell?

20 A. The doors are open which you shouldn't
21 have the doors open if you are using the
22 equipment. It's kind of dangerous for it. It
23 makes it overheat and you would only really have
24 it open for inspection and the maintenance.

25 Q. And when you are talking about the door

1 being open, is that the angle piece going off
2 the machine on the left-hand side?

3 A. Yes.

4 Q. Did you work on these generators when
5 you worked at Sunbelt?

6 A. Generators and compressors.

7 Q. Compressors. Thank you.

8 MR. WIESE: Nothing further.

9 JUDGE ROSAS: Charging Party, anything?

10 MR. RYAN: Nothing further. Thank you.

11 JUDGE ROSAS: Cross?

12 MS. HILL: Yes, sir. Anything you want
13 to show me, sir?

14 MR. WIESE: Yep.

15 JUDGE ROSAS: Off the record.

16 (Whereupon, a short recess was
17 taken.)

18 JUDGE ROSAS: This affidavit May 1,
19 2019 even though it's leading to the RD, relates
20 sufficiently to the testimony regarding what he
21 was told about the restructuring so, again, he
22 just -- he has just testified about what he was
23 told and he has been asked questions about the
24 equipment that was there and there is some
25 statements there about the equipment so show

1 that to counsel. These have nothing -- These
2 just have to do with decert paper business.

3 MR. WIESE: I am going to make a copy
4 of this statement while you are reviewing
5 because I don't have enough for myself and the
6 witness in case you need it.

7 MS. HILL: Okay.

8 JUDGE ROSAS: All right. Respondent,
9 cross?

10 CROSS EXAMINATION

11 BY MS. HILL:

12 Q. Mr. McKellips, I am Patricia Hill. I
13 represent Sunbelt Rentals, the respondent in
14 this matter and the judge has given me
15 permission to ask a few follow-up questions.

16 First of all, the photographs that you
17 were asked to testify about, had you seen those
18 photographs prior to today, sir?

19 A. Yes. When I met with Tyler here
20 before.

21 Q. And other than for these affidavits,
22 you met with Mr. Wiese?

23 A. Eric? Your last name is Wiese.

24 Q. Tyler Wiese. I'm sorry. His name is
25 Tyler.

1 A. No. I met with a gentleman named Eric
2 to make the affidavit.

3 Q. But you also met with Tyler?

4 A. Yes.

5 Q. And when was that?

6 A. That was last week.

7 Q. And he showed you the photographs that
8 you were talking about today?

9 A. Yes.

10 Q. Now, when you met with Tyler and saw
11 the photographs that you just testified about,
12 had you seen the photographs prior to that?

13 A. No.

14 Q. Now, have you discussed these
15 photographs with Mr. Pender?

16 A. No.

17 Q. Did you tell Mr. Pender you were going
18 to be testifying today?

19 A. No.

20 Q. I believe you said that you had several
21 conversations with Mr. Pender, correct?

22 A. Yes.

23 Q. Would you consider Mr. Pender a friend
24 of yours?

25 A. Yes.

1 Q. Both of you are veterans, correct?

2 A. Yes.

3 Q. And with respect to your layoff, in
4 that meeting, were you told that you were being
5 laid off or terminated?

6 A. Laid off.

7 MS. HILL: Okay. Does he have the
8 other exhibits?

9 MR. WIESE: Yes.

10 BY MS. HILL:

11 Q. The big stack of documents there in a
12 binder.

13 A. Yes.

14 Q. Okay. Thanks. Would you please look
15 at Exhibit 20? And if you would please review
16 that and when you are finished reviewing it,
17 please look up, sir.

18 A. Is there any specific part I should be
19 or just this whole document?

20 Q. If you can just review it and I was
21 going to ask you some questions about it.

22 A. Okay.

23 JUDGE ROSAS: Do you want him to
24 memorize it or what are we doing?

25 MS. HILL: Just to be familiar with it.

1 JUDGE ROSAS: Are you familiar with it,
2 sir? Do you know what this document is about?

3 THE WITNESS: This is my release
4 document stating --

5 BY MS. HILL:

6 Q. Well, wait until I ask a question,
7 okay? You indicated at the meeting in the
8 conference room with Bo and with Bryan that you
9 were given some paperwork?

10 A. Yes.

11 Q. Okay. That Exhibit No. 20, was not
12 part of the paperwork that you received,
13 correct?

14 A. No.

15 Q. How did you receive that piece of
16 paperwork?

17 A. That was -- I received that I believe
18 in an E-mail from the union, I believe from you,
19 Mike? I cannot remember exactly who the E-mail
20 was from and they asked me to sign it and this
21 was something that was done outside of my
22 control for separation.

23 Q. Okay. Now, if you would please look at
24 the Exhibit 57, sir, just the first page of
25 Exhibit 57.

1 A. This is on the front. I got 56.

2 MS. HILL: Is 57 there?

3 MR. WIESE: I don't believe it's in the
4 binder.

5 MS. HILL: Where is 57?

6 MR. WIESE: It should be loose up
7 there. There are some papers next to it.

8 JUDGE ROSAS: Here you go, sir.

9 THE WITNESS: Thank you.

10 BY MS. HILL:

11 Q. Just the first page, sir.

12 A. Okay.

13 Q. All right. Is this first page of
14 Exhibit 57 the paperwork that you received at
15 the meeting in the conference room with Bryan
16 and Bo?

17 A. No.

18 Q. Did you ever receive this piece of
19 paper, sir?

20 A. No.

21 Q. You are not familiar with it the an
22 all?

23 A. This is the first time I am seeing it.

24 Q. Okay. Were you told -- Thank you.

25 Were you told that you were eligible for rehire

1 during that meeting with Bryan and Bo?

2 A. Yes.

3 Q. And did anyone during that meeting
4 indicate to you how you could go about to apply
5 for another job with Sunbelt?

6 A. We talked about -- because I asked them
7 instead of a layoff if I would be willing to
8 transfer to a different store to stop any sort
9 of layoff because I just sold my house and they
10 said no, but you -- essentially going through
11 standard channels of hiring or applying for a
12 position online and in person to try and get in
13 at another store.

14 Q. Did they indicate that at that time
15 they didn't have any open positions that you
16 could transfer to?

17 A. No, they didn't.

18 Q. Okay. Now, you stated in your
19 testimony that the Franksville location would
20 only rent small tool. Did -- Which of the two
21 gentlemen said that?

22 A. That was Bryan I believe.

23 Q. Did he say small tool or small
24 equipment?

25 A. I believe he used the term tool, but

1 I'm not a hundred percent on which actual word
2 it was.

3 Q. Did Bo or Bryan -- Bo and Bryan did not
4 define small tool or small equipment, correct?

5 A. No. I believe -- actually, no, they
6 did do that in that meeting, yes. It was stuff
7 that customers could take on their own, was my
8 understanding in what they said.

9 Q. And Mr. Pender did repair equipment
10 prior to your layoff, correct? And I am just
11 referring to the Franksville location.

12 A. Yes.

13 Q. And he did wash equipment at the
14 Franksville location prior to your layoff,
15 correct?

16 A. Yes. He said he was helping us.

17 Q. And if I heard you correctly, sir, when
18 you saw Mr. Stamm in the semi that was on 94
19 going south of Highway K, you did not know what
20 he was doing; is that what you testified to?

21 A. No. I didn't know if he was coming
22 from dropping something off, going to pick up.
23 I just mainly remember seeing him and wondering
24 why he was still driving.

25 Q. Oh, in any of the photos in Exhibit 25

1 that you were looking at, do you see the UTV
2 that you said Mr. Pender was working on?

3 A. I don't see them in the pictures.

4 Q. And because I notice that Tyler was
5 trying to determine which was the first time
6 that you were you went back to the profit center
7 and the second time. The first time if I
8 understood you correctly was a week and a half
9 after the layoff, correct?

10 A. Yes. And it was not there then.

11 Q. What wasn't there?

12 A. The UTV wasn't there.

13 Q. Okay. And then the second time that
14 you went back to the profit center, how long was
15 that after your layoff?

16 A. I would say that was closer to a month
17 after.

18 Q. And because of when -- I'm sorry. Just
19 a moment. And between the first visit a week
20 and a half later and you believe a month later
21 for the second visit to the profit center,
22 equipment from the Franksville location had been
23 moved out, correct?

24 A. Yes.

25 Q. Oh. Picture of the backup repair truck

1 Page 6 of 45. This one should be in the binder.

2 A. Of exhibit --

3 Q. The photos. Yeah. Page 6 of
4 Exhibit 45 -- oh, 25.

5 A. Exhibit 25. Okay. Okay. The service
6 truck.

7 Q. You said this was the backup service
8 truck?

9 A. Yes.

10 Q. And how do you know that this is the
11 backup service truck for the Franksville
12 location?

13 A. At the time, I was the only service
14 tech. I use an F450 because it had more room
15 for my tools and all my tools would not fit in
16 this truck.

17 Q. Because this is an F250?

18 A. Yes and much smaller compartments to
19 it.

20 Q. Okay. Were there other F250 repair
21 trucks for other profit centers?

22 A. Yes.

23 Q. So I am trying to figure out is how do
24 you know this is the one for Franksville?

25 A. The million number. The other ones

1 from the other stores were they had smaller
2 numbers to them.

3 Q. Thank you. That's what I was trying to
4 determine. And for this particular photograph,
5 you don't see any employee in it or working on
6 it, correct?

7 A. No.

8 Q. Prior to your layoff, did you ever see
9 Mr. Pender working on a wood chipper such as the
10 Vermeer wood chipper that you see on Page 14?

11 A. I know that I have seen him giving
12 assistance but never on his own I don't think
13 for a wood chipper. That I think that's my
14 understanding was what he liked to do was to
15 give assistance and make sure that we were at
16 least learning because it's such a vast variety
17 of equipment, it's hard to know everything about
18 it all.

19 Q. And Mr. Pender was a very good teacher
20 to you, correct?

21 A. Yes.

22 Q. And Mr. Romanowski was a parts
23 replacement mechanic, correct?

24 A. That's what some people called him,
25 yeah.

1 Q. Would you call him that, sir?

2 A. Some days. Some days. He would get --
3 it would be very frustrating.

4 Q. Okay. The wood chipper when it came
5 back from a customer, would it have to get
6 washed off?

7 A. Yes.

8 Q. And is that something that equipment
9 rental specialist or even Mr. Pender could clean
10 up?

11 A. Yes.

12 Q. And you have seen even Mr. Anderson
13 washing off equipment such as the wood chipper,
14 correct?

15 A. I don't think I have ever seen Mr.
16 Anderson washing equipment.

17 Q. Have you -- and you have seen Mr.
18 Anderson delivering equipment prior to your
19 layoff, correct?

20 A. Yes. Mainly if it was going to another
21 store area, he would get it there or bring it to
22 that customer.

23 Q. And you -- and prior to your layoff,
24 you saw all of the outside sales representatives
25 delivering equipment or picking up equipment and

1 returning it to the profit center, correct?

2 A. Yes.

3 Q. Looking at Page 15 of 45, do you
4 recognize -- I'm sorry. Are you there, sir?

5 A. Yes.

6 Q. Do you recognize that white pickup
7 truck?

8 A. Bryan drove one just like it.

9 Q. But you don't know if this is his?

10 A. No, I don't. He kept it pretty clean.
11 I couldn't tell if it was that one. It looks
12 like it, though.

13 JUDGE ROSAS: Counsel, I am going to
14 start limiting you now to the photographs that
15 were shown to this witness on direct, okay?

16 MS. HILL: Yes, sir.

17 BY MS. HILL:

18 Q. And, sir, did you take advantage of the
19 job postings to look for a job another job with
20 Sunbelt?

21 A. I did not, no.

22 Q. And why not, sir?

23 A. I was a little bitter about what had
24 happened. It took me a good while to get out
25 back up on my feet. I was -- like I said, I was

1 in the middle of buying a house and selling a
2 house so I was living out of my in-laws for a
3 while so I was just like I need to get me back
4 together first before I do that.

5 Q. And you said you worked for Michael's?

6 A. Yes. They are -- well, I work in their
7 foundations department right now, so I work on a
8 tug and barge right now.

9 Q. And is that a job that you were able to
10 get through your connections at Sunbelt or
11 through the union?

12 MR. WIESE: Objection, your Honor.
13 Relevance.

14 JUDGE ROSAS: Sustained.

15 MS. HILL: No further questions --

16 JUDGE ROSAS: All right. Any follow
17 up?

18 MS. HILL: -- at this time.

19 MR. WIESE: Briefly, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. WIESE:

22 Q. With respect to Page 6 of General
23 Counsel Exhibit 25, you testified that you could
24 identify that this truck here was the backup
25 truck from the Franksville facility

1 specifically?

2 A. Yes.

3 Q. How could you tell that?

4 A. The unit number. There was a million
5 number. I put that sticker on there.

6 Q. Where is that sticker located on the
7 truck?

8 MS. HILL: It's right on the side of
9 the door.

10 MR. WIESE: What?

11 THE WITNESS: It's on the door there.

12 BY MR. WIESE:

13 Q. Okay. Below the Sunbelt Rentals?

14 A. Yes.

15 Q. Okay. Thank you.

16 MR. WIESE: Nothing further.

17 JUDGE ROSAS: Charging Party, anything?

18 MR. RYAN: Just real quickly staying on
19 that one photograph.

20 CROSS EXAMINATION

21 BY MR. RYAN:

22 Q. You said this was the backup truck?

23 A. Yes.

24 Q. So it wasn't used daily?

25 A. No.

1 Q. Where would it typically be parked when
2 it's not in use?

3 A. Outside the gate.

4 Q. Outside the gate on the parking lot?

5 A. Where the employees usually park over
6 by the dumpsters on the north side.

7 Q. Okay. And can you tell from this
8 photograph where it's parked at the moment?

9 A. That is parked right outside the -- it
10 looks like the shipping door on the south side,
11 the middle overhead door.

12 MR. RYAN: Nothing further. Thank you?

13 JUDGE ROSAS: Any follow up, Counsel?

14 MS. HILL: No, sir.

15 JUDGE ROSAS: Okay. All right. Thank
16 you, sir. That concludes your testimony.
17 Please do not discuss your testimony with anyone
18 until you are advised by counsel or otherwise,
19 okay?

20 THE WITNESS: All right.

21 JUDGE ROSAS: You have a good day. All
22 right. Off the record.

23 (Whereupon, a discussion was had
24 off the record.)

25 JUDGE ROSAS: Back on the record. All

1 right. So at this time, General Counsel, you
2 have no further witnesses subject to your review
3 of documents?

4 MR. WIESE: That's correct.

5 JUDGE ROSAS: Okay. Yet to be produced
6 pursuant to the Special Master report. My
7 understanding from Judge Steckler is that she is
8 still proceeding diligently to complete that
9 review. She has issued two portions of it but
10 that's a small fraction of the entirety of those
11 documents so what we'll do is upon receipt of
12 her completed review, Master's -- Special Master
13 report that is complete of all of the documents
14 that are claimed to be privileged, I will
15 convene the parties for a conference call to
16 reset a date for the resumption, okay? Any
17 questions at this time?

18 MR. WIESE: No.

19 MS. HILL: No, sir.

20 JUDGE ROSAS: Okay. Off the record.

21 (Hearing adjourned at 5:20 p.m.

22 sine die.)
23
24
25

1 CERTIFICATE

2
3
4
5 This is to certify that the attached
6 proceedings before the National Labor Relations
7 Board (NLRB), Region 18 - Subregion 30, in the
8 matter of SUNBELT RENTALS, INC., Case Nos.
9 18-CA-236643 and 18-CA-238989, in Milwaukee,
10 Wisconsin, on December 18, 2019, was held
11 according to the record, and that this is the
12 original, complete, and true and accurate
13 transcript that has been compared to the
14 recording, at the hearing, that the exhibits are
15 complete and no exhibits received in evidence or
16 in the rejected exhibit files are missing.

17 

18 PAULA ERICKSON, CSR, RPR

19 License No. 084-003899
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**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**Case No.: 18-CA-236643
 18-CA-238989
 18-CA-247528**

SUNBELT RENTALS, INC.

Respondent

And

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 139,
AFL-CIO**

Charging Party

**Place: Milwaukee, WI
Date: 02/18/20
Pages: 855-1089
Volume: 4**

OFFICIAL REPORTERS

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1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 18 - SUBREGION 30
4

5 In the Matter of: |

6 SUNBELT RENTALS, INC., |

7 Respondent, |

8 and |

Case Nos.: 18-CA-236643

9 INTERNATIONAL UNION OF |

18-CA-238989

10 OPERATING ENGINEERS LOCAL 139, |

18-CA-247528

11 AFL-CIO, |

12 Charging Party. |

13
14
15
16
17
18 The above-entitled matter came on for hearing
19 pursuant to notice, before ADMINISTRATIVE LAW JUDGE
20 MICHAEL ROSAS, at the National Labor Relations Board,
21 Subregion 30, 310 West Wisconsin Avenue, Suite 450W,
22 Milwaukee, Wisconsin, on Tuesday, February 18, 2020,
23 at 9:30 a.m.
24
25

A P P E A R A N C E S

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Also Present:

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Union organizer

I N D E X

	DX	CX	RDX	RCX	VOIR DIRE
GENERAL COUNSEL WITNESSES:					

ROBERT BOGARDUS, III	--	--	866	897	--
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JASON MAYFIELD	--	--	898	--	--
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BRYAN S. ANDERSON	905	909	--	--	--
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	DX	CX	RDX	RCX	VOIR DIRE
RESPONDENT WITNESSES:					

ROBERT BOGARDUS, III	914	925	931	933	--
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JASON MAYFIELD	935	1017 1022	1024	--	--
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BRYAN S. ANDERSON	1028	1080 1084	1086	--	1070 1071
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E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

* GCX 5L	293	296
GCX 47	862	866
GCX 60	910	--
GCX 61	862	866
GCX 62	862	866
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GCX 74	862	866
GCX 75	862	866
GCX 76	862	866
GCX 77	862	866
GCX 78	862	866
GCX 79	862	866
GCX 80	862	866
GCX 81	862	866
GCX 83	862	866
GCX 84	862	866

1 (Exhibits continued.)

2

3	EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
4	RESPONDENT		

5	R 4	947	948
	R 6	992	998
6	R 7	916	918
	R 8	1039	1071
7	R 9	1054	1080
	R 10	1059	1061
8	R 12	939	946
	R 13	939	946
9	R 14	939	946
	R 15	939	946
10	R 16	939	946
	R 17	939	946
11	R 18	939	946
	R 19	939	946
12	R 20	939	946
	R 21	939	946
13	R 22	939	946
	R 23	939	946
14	R 24	939	946
	R 25	939	946
15	R 26	939	946
	R 27	939	946
16	R 28	939	946
	R 29	939	946
17	R 30	939	946
	R 31	939	946
18	R 32	939	946
	R 33	939	946
19	R 34	939	946
	R 35	939	946
20	R 36	939	947
	R 37	939	947
21	R 38	939	947
	R 39	1062	1063

22

23

24

25

P R O C E E D I N G S

(Time Noted: 9:45 a.m.)

JUDGE ROSAS: All right. This is the continuation in the matter of Sunbelt Rentals, Inc., Case 18-CA-236643, et al.

Counsel for GC, do you have any other documents or witnesses that you need to call or introduce?

MR. WIESE: Yes, your Honor. First before I introduce any new documents, I would like to flag that General Counsel Exhibit 5L, which were the Union's bargaining notes from the June 5th, 2019 bargaining session, were inadvertently excluded from the record in the case.

JUDGE ROSAS: June 26th?

MR. WIESE: It's June -- June 6th, I believe, of 2019.

MS. HILL: I thought it was June 5th.

MR. WIESE: June 5th it might be. Yeah, it is, it's June 5th of 2019.

JUDGE ROSAS: They were inadvertently omitted?

MR. WIESE: That's correct.

JUDGE ROSAS: From where?

MR. WIESE: From the record, if you look at the record in the case from the court reporter.

JUDGE ROSAS: Were they offered and received?

1 MR. WIESE: They were.

2 JUDGE ROSAS: But they're not in the record,
3 they're not mentioned in the record?

4 MR. WIESE: That's correct.

5 JUDGE ROSAS: Do you have a page in the
6 transcript where they were referenced?

7 MR. WIESE: Yes. 293.

8 JUDGE ROSAS: Is that right, Counsel?

9 MS. HILL: I'm double checking, yeah. I'm going
10 to assume --

11 JUDGE ROSAS: He says that it's referenced at
12 transcript Page 293.

13 MS. HILL: Okay. It's "L, M, N and O."

14 JUDGE ROSAS: Now, the Index does indicate GCX 5F
15 to O, so wouldn't that include 5L?

16 MR. WIESE: Yes, that's correct.

17 MS. HILL: Yeah.

18 MR. WIESE: But if you look at the exhibits that
19 were provided.

20 MS. HILL: That they cited in the beginning?

21 JUDGE ROSAS: It's more in the nature of
22 housekeeping --

23 MS. HILL: Yeah.

24 JUDGE ROSAS: -- because the transcript refers to
25 it, and it's referenced in the Index, so that's not a

1 concern.

2 MR. WIESE: Okay. But it's missing.

3 JUDGE ROSAS: You'll give it to the reporting
4 agency, and they'll just, I guess, have it bound as a
5 separate -- or it can be included with any additional GC
6 documents that are received this week. Okay?

7 MR. WIESE: All right. Thank you, your Honor.
8 And I'd like to offer General Counsel Exhibit 47, along
9 with General Counsel Exhibits 61 to 81, and then I
10 believe 83 and 84.

11 MS. HILL: Okay. Give me those numbers again,
12 please, sir. You said 47. This is only one page of a
13 very long document.

14 MR. WIESE: Yes. I'm just offering the first
15 page of that document.

16 MS. HILL: And then you said 61?

17 MR. WIESE: That's correct, 61.

18 MS. HILL: 62, then 63 all the way through to the
19 end in this package?

20 MR. WIESE: Yes, except there is no General
21 Counsel Exhibit 82.

22 JUDGE ROSAS: So these are the exhibits that you
23 referenced off the record that have been culled or
24 selected from those that were produced by the Respondent
25 that were subject to in camera inspection?

1 MR. WIESE: That's correct, your Honor, with the
2 exception of General Counsel Exhibit 47 which was
3 offered and inadvertently not introduced at the start of
4 the -- or during our initial hearing.

5 MS. HILL: Okay. So what you're saying is
6 General Counsel 47, back in December you were going to
7 offer this, just this single page?

8 MR. WIESE: That's correct.

9 MS. HILL: The one objection I have, your Honor,
10 is that it's not a complete document. This is only the
11 cover page for a multiple-page document. The best
12 evidence is to have the complete document.

13 JUDGE ROSAS: What does that do for us?

14 MR. WIESE: The reason that I'm offering this
15 document has to do with the handwriting on the document.
16 And I didn't want to clutter up the record. I mean as
17 Ms. Hill indicated, the overall document, I think it's
18 over 100 pages.

19 JUDGE ROSAS: As an exemplar? It's basically
20 being introduced as an exemplar?

21 MR. WIESE: No. For the substance of what's
22 handwritten on the document.

23 JUDGE ROSAS: The handwriting on the document by
24 whom? Do we know?

25 MR. WIESE: No.

1 JUDGE ROSAS: We don't know.

2 MS. HILL: Well, with respect to this particular
3 document, the pages that come after it, your Honor, have
4 the same handwriting on them, on not every single page,
5 but on many of the pages, so I still suggest that to get
6 the full context of this, the witness may need, and it
7 would be appropriate for best evidence, to have the
8 whole document.

9 JUDGE ROSAS: So that's a cover page for --

10 MS. HILL: Yes, sir. This is the draft agreement
11 that the negotiation team was working on. The person
12 who wrote this wrote notes on this and on the subsequent
13 pages.

14 JUDGE ROSAS: Okay. But they're different notes?

15 MS. HILL: Not the same wording. The same
16 handwriting, the same person.

17 JUDGE ROSAS: The same handwriting. And is this
18 draft going to be introduced or has it been introduced?

19 MR. WIESE: The entire document hasn't been
20 introduced. I wasn't intending on introducing the
21 entire document.

22 JUDGE ROSAS: Do you have a copy of it, Counsel?

23 MS. HILL: Yes, sir.

24 JUDGE ROSAS: Well, you can introduce it then.
25 We'll receive the first page, for whatever purposes

1 counsel seeks to establish, over objection.

2 MR. WIESE: And your Honor, with respect to the
3 remaining documents, which are General Counsel Exhibits
4 61 through 81, and then General Counsel Exhibits 83 and
5 84, those are all documents that have been pulled from
6 the privilege production.

7 MS. HILL: Your Honor, without looking to see if
8 some of these e-mails were part of a long e-mail thread
9 or chain, and depending on how he uses this, I don't
10 have an objection to these being introduced, but I may
11 raise an objection when it's being used and I'd look at
12 the complete report. I have one binder here, a second
13 binder here. If there are more e-mails that were
14 connected to these, I might raise an objection.

15 JUDGE ROSAS: Well, he's not calling any
16 witnesses, right?

17 MR. WIESE: No. I am, your Honor.

18 MS. HILL: He is.

19 JUDGE ROSAS: You're calling some witnesses now?

20 MS. HILL: Yes, sir.

21 MR. WIESE: Yes, that's correct.

22 JUDGE ROSAS: Okay. So you have no objection to
23 them being received per se?

24 MS. HILL: Per se.

25 JUDGE ROSAS: All right. So they've been

received without objection, 61 through 81 and 83 and 84
as well as GC 47.

(GCX 47, 61-81 and 83-84 were received.)

JUDGE ROSAS: Do you have a witness?

MR. WIESE: Yes. I'll call Bo Bogardus to the
stand.

MS. HILL: Let me go get him.

(Pause in the proceedings.)

THE WITNESS: Good morning. How are you all
doing?

JUDGE ROSAS: Good morning, Mr. Bogardus. I'll
remind you you're still under oath.

THE WITNESS: Yes, sir.

REDIRECT EXAMINATION

BY MR. WIESE:

Q Morning.

A Morning, sir.

Q There's a folder in front of you, Mr. Bogardus.
Do you see that?

A Yes, sir.

Q Okay. We're going to be going through some of
the documents in there. So I'd like to start with
General Counsel Exhibit 61 which should be, I believe,
the second page in there.

A Where would I see the -- oh, okay. GCX?

1 Q Yes.

2 A Okay. I got it now.

3 Q Thank you. So Mr. Bogardus, this is an e-mail
4 chain between yourself and Ms. Hill and a couple other
5 individuals from Sunbelt, is that accurate?

6 A Yes.

7 Q And you sent this e-mail around the time of the
8 union organizing campaign at the Franksville facility,
9 is that right?

10 A Yes.

11 Q And going to the first line of that e-mail,
12 there's a reference to someone named "Katie." Do you
13 see that?

14 A Yes.

15 Q And that individual, that's Katie Torgerson, is
16 that right?

17 A Yes, sir.

18 Q And she was the profit center manager for the
19 Franksville facility at that time?

20 A Yes, sir.

21 Q And the information about the pro union and pro
22 Sunbelt individuals, did you obtain that information
23 from Ms. Torgerson?

24 A I believe I did, yes.

25 Q Did you direct Ms. Torgerson to obtain that

1 information?

2 A I did not.

3 Q Do you have any idea how she obtained that
4 information?

5 A I do not.

6 Q You didn't follow up with her at all?

7 A No, sir.

8 Q Do you know why she sent it to you?

9 A When she got the letter --

10 MS. HILL: Objection.

11 JUDGE ROSAS: What's the basis?

12 MS. HILL: It asks for speculation.

13 JUDGE ROSAS: I'll sustain that.

14 You can rephrase, try it again.

15 BY MR. WIESE:

16 Q How did you get this information from Ms.
17 Torgerson?

18 A When I talked to Katie about the -- being
19 whatever is served, when Mike or whoever it was that
20 brought it in, I asked her who she talked -- the impetus
21 if you will.

22 Q And after you received this e-mail from Ms.
23 Torgerson, did you engage in any efforts to identify who
24 the union's porters were at the Franksville facility?

25 A No, sir.

1 Q Not at all?

2 A No, sir.

3 Q If you go to the top of the e-mail and the
4 individuals that were cc'd on that e-mail, I see someone
5 named "Cheryl Black" there. Do you see that?

6 A Yes, sir.

7 Q Ms. Black is the chief Human Resources officer
8 for Sunbelt, is that correct?

9 A I'm not exactly sure of her title, but yes, she's
10 the head of Human Resources.

11 MR. WIESE: And I guess I'd request a stipulation
12 as to Ms. Black being a 211 supervisor, manager. She's
13 head of HR for the entire organization.

14 MS. HILL: She is the vice president of Human
15 Resources. I believe you have testimony from Ms.
16 Strohmeier about her, too.

17 MR. WIESE: Right, that's correct.

18 MS. HILL: So I don't know why we have to
19 stipulate, but if you need a stipulation for that, okay.

20 MR. WIESE: So we have a stipulation on that?

21 MS. HILL: That she is a manager for Sunbelt.

22 MR. WIESE: Okay. Thank you.

23 BY MR. WIESE:

24 Q Mr. Bogardus, do you normally include Cheryl
25 Black on e-mails that you send?

1 A Only when they're related to HR.

2 Q So if you have an e-mail related to an HR issue,
3 you send it to Cheryl Black?

4 A Occasionally. Not on all matters.

5 Q Okay. Outside of this union organizing campaign,
6 how often had you e-mailed Cheryl Black?

7 A I don't know. A dozen, a dozen or more. Not a
8 lot.

9 Q Is there a reason you started including her on
10 e-mails during the union organizing campaign?

11 A Yeah.

12 Q What reason was that?

13 A She's the VP of HR. She needed to know.

14 Q Looking at the names of the employees in this
15 e-mail, these are all bargaining unit employees at the
16 Franksville facility, is that correct? When I say that,
17 the names below, pro union and pro Sunbelt.

18 A I'm not sure about Richter's status because I
19 think he was out on workers' comp.

20 Q Besides Mr. Richter, what about the rest of the
21 employees?

22 A Yes.

23 Q Let's turn to the next exhibit, General Counsel
24 62. So looking -- again, this is an e-mail that you
25 sent, correct?

1 A Yes, I believe so.

2 Q And you sent this e-mail again around the
3 beginning of the union organizing campaign at the
4 Franksville facility?

5 A Yes, sir.

6 Q Looking at the first line of that e-mail, it
7 references "several conversations with members of our
8 team." Do you see that?

9 A Yes, sir.

10 Q What were those conversations about?

11 A A lot of -- you know, just general stuff.

12 Q Did they have anything to do with the union?

13 A There was some questions if I remember correctly,
14 yes, sir.

15 Q And the "members of our team" that are referenced
16 there, who are those individuals?

17 A I honestly can't tell you. I don't know.

18 Q Were any of them employees at the Franksville
19 facility?

20 A I was not at the Franksville facility for the
21 inventories.

22 Q And then if you go down to the second paragraph
23 of that e-mail, there's a reference to something called
24 "this Racine event." Do you see that?

25 A Yep.

1 Q And the Racine event that you're referencing is
2 the union filing an election petition at the Franksville
3 facility, is that correct?

4 A That would be correct.

5 Q And then if you go to the very last line of the
6 e-mail below the redacted portion but above the second
7 redacted portion.

8 A Uh-huh.

9 Q Do you see that sentence there, "In Racine it is
10 the drivers, Richter and Smith, that are driving the
11 organizing initiative"?

12 A Yes, sir.

13 Q And Mr. Richter is a bargaining unit employee or
14 was?

15 A When he was employed. I don't know what you call
16 it when he's on workers' comp. I mean he's still an
17 employee, but --

18 Q So just to clarify, he was a driver at the
19 Franksville facility who was on workers' comp at that
20 time?

21 A That is correct.

22 Q And you identified Mr. Richter as someone driving
23 the organizing campaign?

24 A I didn't know that I was saying -- I guess I did
25 say he was driving the organizing initiative. I don't

1 know if that's exactly what I meant. My understanding
2 was that they were very both pro union.

3 Q How did you find out that Mr. Richter was very
4 pro union?

5 A Others within the organization told me.

6 Q Did you ask any employees about Mr. Richter?

7 A I did not.

8 Q What about the Mr. Smith there, that's a
9 reference to Jamie Smith, correct?

10 A That is correct.

11 Q He's another driver or was a driver at the
12 Franksville facility?

13 A That is correct.

14 Q How did you identify him as a leading union
15 organizer?

16 A The guys voluntarily told me. I did not ask.
17 They told me.

18 Q Who told you?

19 A A number of the drivers.

20 Q At the Franksville facility?

21 A No.

22 Q They would be at other facilities?

23 A Yes.

24 Q Which facilities?

25 A Pretty much every one of the GT locations in the

1 state.

2 Q And this is because Mr. Smith was talking to the
3 other employees about the union at these facilities?

4 MS. HILL: Objection, speculation.

5 JUDGE ROSAS: I'll allow it. It's cross.

6 You can answer if you know.

7 THE WITNESS: I -- he was reaching out to them.
8 I don't know exactly what those conversations were, but
9 several of them asked me to have him stop making those
10 calls, whatever they were about.

11 BY MR. WIESE:

12 Q Okay. Let's go to the next document, General
13 Counsel Exhibit 63. So this is again another e-mail
14 that you sent around the time of the union organizing
15 campaign at Franksville, is that correct?

16 A Yes.

17 Q And the very first line of this e-mail makes
18 reference to someone named "Gary Stamm." Do you see
19 that?

20 A I do.

21 Q Okay. And you identify him as, it looks like,
22 senior ERS at Racine?

23 A Correct.

24 Q What does ERS stand for?

25 A Equipment rental specialist.

1 Q And the Racine that you're identifying there,
2 that's the Franksville facility, is that correct?

3 A Correct.

4 JUDGE ROSAS: Now, this is cross examination.
5 We've had an abundance of testimony, Counsel, so let's
6 just -- I know you're trying to get some clarification
7 from the documents that's not otherwise evident from
8 them, so let's keep it very lean. Okay?

9 BY MR. WIESE:

10 Q If we go down to the very last line of the e-mail
11 above the redacted portion, there's a reference to union
12 propaganda purveyors. Do you see that?

13 A Yes, sir.

14 Q Who are those individuals?

15 A I can't tell you. I don't know them.

16 Q Who did you believe the union propaganda
17 purveyors were when you wrote that?

18 A Members of 139 already.

19 Q So not employees, these are --

20 A No.

21 Q Now, let's turn to General Counsel Exhibit 64.
22 This is again another e-mail chain that you sent, is
23 that correct, Mr. Bogardus?

24 A Yes.

25 MS. HILL: Excuse me. Could we just let the

1 witness review the entire exhibit before he starts
2 questioning. Would that be okay, your Honor?

3 JUDGE ROSAS: Well, these are all obvious e-mails
4 so far, so I'll let him at least dash into that, have
5 the witness look at whatever he's asking about, the
6 substance of it.

7 Next question.

8 BY MR. WIESE:

9 Q So can you look at Page 2 of this exhibit, the
10 second half of that page. It's an e-mail from yourself
11 to Ms. Hill cc'ing Jason Mayfield. Do you see that?

12 A Yes.

13 Q And the second line of that e-mail references the
14 "'Yes' vote this past Tuesday at 776."

15 That was the union vote at the Franksville
16 facility, is that correct?

17 A I just -- I guess if you could define union vote,
18 you know.

19 Q The vote where employees voted to be represented
20 by Local 139.

21 A Yes, yes.

22 Q Okay. And then if you go down to the next
23 paragraph, you reference some drivers from Racine,
24 "Smith and Schuls." Do you see that?

25 A Yes, sir.

1 Q And those are both drivers at the Franksville
2 facility?

3 A Yes, sir.

4 Q The "Schuls" there, who is that in reference to?

5 A Troy Schuls.

6 Q And you were documenting communications that
7 Mr. Smith and Mr. Schuls had with drivers at other
8 profit centers, is that correct?

9 A That is correct.

10 Q If you go over to Page 3 of the document. The
11 top line of that e-mail there, there's a reference to
12 "fine fellows in Racine." Do you see that?

13 A Yes.

14 Q Who were the "fine fellows" that you're
15 referencing there?

16 A Smith and Schuls.

17 Q And when you referred to them as "fine fellows,"
18 were you being literal or sarcastic?

19 A Literal.

20 Q You referred to them as "fine fellows"?

21 A Yeah.

22 Q It didn't upset you at all that they were talking
23 about the union with other employees at other profit
24 centers?

25 A It bothered me that they were doing it on our

1 time and using our cell phones. I had a problem with
2 that.

3 Q How did you know that they were using Sunbelt
4 phones during working hours?

5 A The other drivers told me.

6 Q And then if you go down to the last paragraph on
7 Page 3, there's a reference between -- or a phone call
8 between yourself and someone named "Jason." Do you see
9 that?

10 A Yes, sir.

11 Q That individual is Jason Mayfield, is that
12 correct?

13 A That is correct.

14 Q And the phone calls that you had with him that
15 are referenced in the e-mail, those were about the
16 union, is that right?

17 A Jason and I talk pretty much daily. It could
18 have been about the union, it could have been about any
19 number of things.

20 Q So you don't recall specifically whether those
21 conversations had anything to do with the union?

22 A I don't.

23 Q And if you go to the very last line of that
24 e-mail, there's a reference to "started the weekend off
25 in a good mood." Do you see that?

1 A Yes, sir.

2 Q Were you being literal there?

3 A Define literal I guess.

4 Q Well, did you mean what you said or were you
5 being sarcastic?

6 A I honestly don't remember how I felt. It was
7 good to know what was going on, but I don't remember to
8 be honest.

9 Q If you go back now to Page 1 of that exhibit, and
10 we're working backwards here. So if you go to the first
11 paragraph below the bullet points in that e-mail that
12 you sent --

13 A Yeah.

14 Q -- there's a reference to "a fair amount of
15 propaganda." Do you see that?

16 A Yes, sir.

17 Q The propaganda there is the Franksville drivers
18 talking to drivers at other profit centers, is that
19 correct?

20 A That is correct.

21 Q And you were concerned about the fact that these
22 drivers were talking to their co-workers at other profit
23 centers?

24 A During working hours regarding something outside
25 of our business, yes.

1 Q Were you concerned specifically about the fact
2 that they were talking about the union?

3 A To me that's a personal issue at that point. We
4 had not signed anything with the union, so their
5 personal issues should have been on their personal
6 hours.

7 Q Were you concerned about the fact that they were
8 sharing specific benefits that the union might have been
9 promising them?

10 MS. HILL: Objection, form, speculation.

11 MR. WIESE: I'm asking the witness what he was
12 concerned about.

13 JUDGE ROSAS: If you know.

14 THE WITNESS: No, not really.

15 BY MR. WIESE:

16 Q And if you'd go to the last paragraph of that
17 e-mail, the very last sentence there, you make reference
18 to the fact that yourself and the other profit center
19 managers were going to make yourselves more available
20 and approachable. Do you see that?

21 A Yes, sir.

22 Q The reason you were doing that was because of the
23 union organizing campaign at Franksville, is that right?

24 A No. The main reason was that we needed to be
25 closer to our teams.

1 Q And you sent this e-mail right after the union
2 vote, isn't that correct?

3 A It seems to be a few days after, yeah.

4 Q And you talk about this being a special effort
5 that you were making around that time, is that right?

6 A We always make an effort to stay with teams.
7 It's a small group. We don't overpopulate our PCs with
8 too many people, and we ask them to work diligently.
9 And it's important that we develop those relationships
10 so we know who we're working with and they know who
11 they're working with.

12 Q But your request to make the profit center
13 managers and yourself more available didn't have
14 anything to do with the union vote?

15 A I wouldn't say that it didn't have anything to do
16 with it. It's just something that we needed to make
17 sure we were making ourselves available as possible.

18 Q And that was triggered in part by the union vote
19 at Franksville?

20 A I'd say in part, yes, sir.

21 Q Let's turn to General Counsel Exhibit 65. I'd
22 like to start at the bottom of Page 1 of that exhibit.
23 Do you see the acronym "VDOS" there?

24 A Yes.

25 Q What does that stand for?

1 A VDOS.

2 Q What does VDOS stand for?

3 A That's our driver operator -- it's the software
4 we use to track the trucks and to schedule and follow
5 through with deliveries for customers and pickups.

6 Q If you go over to Page 2 of the exhibit, there's
7 a reference in the first bullet point to an individual
8 named "Ray Campbell." Do you see that?

9 A Yes.

10 Q Who is Mr. Campbell?

11 A Ray is the -- I don't know his exact title. He's
12 the manager for our telematics group.

13 Q What does the telematics group do?

14 A They handle all of the vehicle tracking for DOT
15 and for the efficiency of the delivery piece, delivery
16 pickup.

17 Q And the second line in your e-mail, you make
18 reference to "keep the request quiet," do you see that,
19 the second line in that bullet point?

20 A Yeah.

21 Q Okay. You were concerned about the request that
22 you made to Mr. Campbell being kept quiet, is that
23 accurate?

24 A I honestly don't know what I was concerned about.
25 Ray works out of Fort Mill, and I didn't necessarily

1 want him talking to everybody at Fort Mill about what we
2 were doing.

3 Q And the next line, "get us what we need," do you
4 see that?

5 A Yes.

6 Q What were you hoping to get from Mr. Campbell?

7 A There's a -- part of that is a tracking mechanism
8 so we can know where the trucks are. It helps us when
9 we're trying to align emergency pickups with deliveries,
10 and we know where the trucks are and being able to
11 commit to our customers when we can do that.

12 Q And this e-mail about Mr. Campbell, this came in
13 the context of communications about Franksville
14 employees sharing information with employees at other
15 profit centers, is that accurate?

16 A With the focus being on where they are on our
17 dime and our time.

18 Q And you wanted Mr. Campbell to keep that
19 request -- your request to him quiet?

20 MS. HILL: Objection, asked and answered.

21 JUDGE ROSAS: Sustained.

22 BY MR. WIESE:

23 Q Going to the second bullet point, there's an
24 individual named "Katherine Flannery." Do you see that?

25 A Yes.

1 Q Who is Ms. Flannery?

2 A She is the manager of our wireless division,
3 takes care of the cell phones and the digital for us.

4 Q And the second sentence there, you're making
5 reference to her gathering cell phone information during
6 the prior union campaign. Do you see that?

7 A I don't know that that was a prior union
8 campaign. I do know what Berner was doing.

9 Q He was trying to bring in the union at another
10 facility, is that right?

11 A On our phones, on our time and aggressively
12 pursuing drivers who asked me to have him stop.

13 Q Okay. And profit -- PC 366, which profit center
14 is that?

15 A Sun Prairie.

16 Q What was the result of Mr. Berner's efforts to
17 bring in the union at that profit center?

18 A It didn't happen.

19 Q Then if you go to the very top e-mail in this
20 chain, it's an e-mail from Mr. Mayfield to yourself on
21 Page 1. Do you see that there?

22 A Yes.

23 Q This is a request from Mr. Mayfield to you to
24 spend time at this PC starting on Monday, is that right?

25 A Correct.

1 Q Which PC was that?

2 A That would be Racine, Franksville.

3 Q And then he was requesting that you hold benefit
4 meetings at each of the other profit centers in your
5 district, is that right?

6 A That is correct.

7 Q When was the last time you held such benefit
8 meetings at all of the profit centers?

9 A I hadn't been here a year at this point, so I had
10 never had that opportunity in Wisconsin.

11 Q And did you in fact go around and visit each
12 profit center?

13 A Yes, we did.

14 Q When you say "we," who else?

15 A We brought in the HR folks.

16 Q Who from HR?

17 A Rebel.

18 Q That's Rebel Strohmeier?

19 A Yes.

20 Q Go to General Counsel Exhibit 66. Looking at the
21 first line of this e-mail, it says, "BTW - we parted
22 ways with Katie yesterday," is that right?

23 A Yes.

24 Q And the "Katie" reference there, that's Katie
25 Torgerson?

1 A Correct.

2 Q She was a profit center manager at the
3 Franksville facility?

4 A Correct.

5 Q And then after she was terminated, you served as
6 the acting profit center manager at that facility?

7 A Correct.

8 Q How long did you serve in that position for?

9 A Three -- roughly 90 days, give or take.

10 Q Go over to General Counsel Exhibit 67. This is
11 an e-mail -- or the top e-mail here is between yourself
12 and Ms. Strohmeier referencing union talk. Do you see
13 that?

14 A To Ms. Strohmeier?

15 Q Yeah. At the very top e-mail, so from Bo
16 Bogardus to Rebel Strohmeier on 67.

17 A Okay.

18 Q Is that accurate?

19 A Yeah.

20 Q Okay.

21 A It appears to be.

22 Q And you're telling Ms. Strohmeier that you're
23 going to press for more details when conversing with
24 PCMs?

25 A That's what it says.

1 Q And the details that you're pressing for there,
2 those are details about conversations about the union,
3 is that right?

4 MS. HILL: Objection, form.

5 JUDGE ROSAS: What's the basis?

6 MS. HILL: I think what he needs to do is lay
7 the -- have him review the e-mail chain there before
8 asking that kind of a question. This is what I
9 suggested before.

10 JUDGE ROSAS: Repeat the question. Repeat the
11 question.

12 BY MR. WIESE:

13 Q I was asking -- Mr. Bogardus, the details that
14 you're asking for in your e-mail, those details concern
15 conversations about the union, is that correct?

16 JUDGE ROSAS: Overruled.

17 You can answer if you know.

18 THE WITNESS: Let me read the e-mail first and
19 I'll --

20 MR. WIESE: Of course.

21 THE WITNESS: -- try to get back to what I was
22 thinking at the time.

23 It appears, the best logic I can make of it, is
24 that apparently one of the Green Bay drivers approached
25 the -- and again, this is a lot of supposition, okay?

1 JUDGE ROSAS: I don't want you guessing, sir.

2 MS. HILL: Right.

3 JUDGE ROSAS: Only if you know.

4 THE WITNESS: All right. Then I'm not going to
5 guess.

6 BY MR. WIESE:

7 Q So you don't recall what the details were that
8 you were pressing?

9 A I don't.

10 Q Okay. Let's go to General Counsel Exhibit 68.
11 And this is an e-mail chain from September of 2018
12 concerning the scheduling of collective bargaining
13 negotiations with the union, is that accurate?

14 A Uh-huh.

15 Q So I'd like to focus on the top e-mail here,
16 specifically the second paragraph, there's a reference
17 to an individual named "Dan asking for more meetings
18 than one per month." Do you see that?

19 A Yes.

20 Q And the "Dan" referenced there, is that -- that's
21 Dan Marsolek, is that correct?

22 A That would be, yes.

23 Q And he's a member of the union's negotiating
24 team, is that right?

25 A Yes.

1 Q And he requested to meet more than once a month,
2 was requesting to do so?

3 A Yes.

4 Q And if you go down a little further in that
5 e-mail, you refer to Mr. Marsolek's offer as a generous
6 offer. Do you see that?

7 A Yes.

8 Q Were you being sarcastic there?

9 MS. HILL: Objection. It requires speculation.
10 This e-mail is from a year and a half ago.

11 JUDGE ROSAS: I'll sustain it.

12 BY MR. WIESE:

13 Q Let's go to General Counsel Exhibit 69. Starting
14 from the very top of this e-mail, there's an individual
15 named "Scott Causey" listed, do you see that, in the
16 "To:" line in the top e-mail there?

17 A Yes.

18 Q Who is Mr. Causey?

19 A He's in Fort Mill. I can't tell you exactly what
20 he does.

21 Q And that e-mail references an attachment, do you
22 see that there, the top e-mail?

23 A Yes.

24 Q If you go to Page 3 of the exhibit. Does this
25 appear to the attachment to that e-mail?

1 A Yes.

2 Q And this flier here was something that the union
3 created, is that correct?

4 A It's going to be a supposition. I guess. I
5 don't know.

6 Q Well, looking at the document, does it appear to
7 be something that the union created?

8 MS. HILL: Objection, speculation.

9 JUDGE ROSAS: Sustained.

10 MS. HILL: How about just asking if --

11 JUDGE ROSAS: Sustained. It speaks for itself.

12 BY MR. WIESE:

13 Q Did Sunbelt agree to have the union post these
14 fliers?

15 A By somebody asking did I agree?

16 Q Yes.

17 A No, I didn't agree.

18 Q To your knowledge, did anyone from Sunbelt agree
19 to have these fliers?

20 A To my knowledge, no.

21 Q Go over to General Counsel Exhibit 70. This is
22 another e-mail chain regarding the scheduling of
23 collective bargaining negotiations, is that correct?

24 A Correct. It appears to be, yes.

25 Q And these -- this e-mail chain appears to be

1 regarding scheduling negotiations in November and
2 December of 2018?

3 A Uh-huh.

4 Q And the union was asking to meet twice in
5 December of 2018, is that accurate?

6 A That's what it appears to be, yes.

7 Q And you declined to meet twice that month, is
8 that right?

9 A Yes.

10 Q All right. Let's skip over General Counsel
11 Exhibit 71 and go to General Counsel Exhibit 72. So in
12 this e-mail, in the first line, there's a reference to
13 "NGU 139." Do you see that?

14 A Yes, I do.

15 Q What does "NGU" stand for?

16 A In my parlance, it stands for no good union.

17 Q Go to General Counsel Exhibit 73. This e-mail is
18 regarding scheduling negotiations in January of 2019, is
19 that correct?

20 A Yes, I believe so.

21 Q And those negotiations in January of 2019 had
22 been cancelled by Sunbelt, is that right, the scheduled
23 negotiations?

24 A I'm going to believe, yes.

25 Q Well, did you attend negotiations in January of

1 2019 with the union?

2 A I'd have to look through my notes to be
3 absolutely certain.

4 Q And this e-mail references a court hearing on a
5 Monday, is that right?

6 A Yes.

7 Q And you didn't in fact attend that court hearing,
8 is that right?

9 A It was rescheduled on whatever day I sent this to
10 Pat.

11 Q So there wasn't a court hearing then in January
12 of 2019 that you attended?

13 A No.

14 Q If you go to General Counsel Exhibit 74. If you
15 go to Page 2 of the document, it appears to be an e-mail
16 that you sent to two individuals named "Brick" and
17 "Russ." Do you see that?

18 A Yes.

19 Q Who are those individuals?

20 A Eric Brickson at the time was the PCM for the Sun
21 Prairie location.

22 Q And what about Russ?

23 A Russ is the salesperson for the Madison area.

24 Q If you go over to General Counsel Exhibit 75.
25 This is an e-mail that you sent, correct?

1 A Yes, sir.

2 Q And that e-mail contained the letter on Page 2 of
3 the exhibit, is that right?

4 A Yes, sir, I believe so.

5 Q And the "McGowan" that's listed in your e-mail on
6 the first page, that's Terry McGowan, is that right?

7 A Yes, sir.

8 Q And he's the business manager of Local 139?

9 A I guess that's his title. That's what it says on
10 the letter.

11 Q When you refer to his letter as a "wonderful
12 communication," are you being sarcastic?

13 MS. HILL: Objection, speculation.

14 JUDGE ROSAS: Sustained.

15 MS. HILL: Thank you.

16 BY MR. WIESE:

17 Q Skip over to General Counsel Exhibit 78. This is
18 an e-mail chain here regarding a decertification
19 election at local -- or excuse me, at the Franksville
20 profit center. Does that look right?

21 A These are old eyes and old glasses and I'm not
22 sure. I can't tell from the pictures.

23 Q Well, I'm looking at 78. Sorry. Skipping over
24 76 and 77.

25 A Oh, okay. Sorry. I wasn't -- sorry about that.

1 Q That's okay.

2 A Okay.

3 Q So this -- if you go over to Page 2 of the
4 exhibit, there's a reference to an election being put on
5 hold, do you see that --

6 A Yes.

7 Q -- at the top of Page 2?

8 A Uh-huh.

9 Q And that was a decertification election at the
10 Franksville facility?

11 A I believe that is, yes.

12 Q And if you go to the top e-mail which is one that
13 you sent to Ms. Hill, correct?

14 A It appears so, yes.

15 Q It references a planning session for shedding
16 this pariah called 139. Do you see that?

17 A I do see that.

18 Q And the pariah that you're referencing there,
19 that's Local 139?

20 A Correct.

21 Q And you referred to Local 139 as a pariah because
22 that's how you felt about them?

23 MS. HILL: Objection.

24 JUDGE ROSAS: Sustained.

25 ///

1 BY MR. WIESE:

2 Q The "planning session" that's referenced there,
3 did that planning session take place?

4 A Not that I recall.

5 Q Go over to General Counsel Exhibit 80. Going to
6 the bottom of Page 3 over to Page 4. So again, we're
7 skipping 79, going over to 80.

8 This is an e-mail that you sent regarding a
9 conversation between Kyle McKellips and manager Chris
10 Pender, is that right?

11 A What was the question again, please, sir?

12 Q So your e-mail at the bottom of Page 3 going over
13 to Page 4 references a conversation between service
14 manager Chris Pender and employee Kyle McKellips?

15 A Yes.

16 Q And then it references the union finding out
17 about that conversation, is that accurate?

18 A Yes.

19 Q And you deduced that it was Al Romanowski who
20 told the union about this based off of your e-mail?

21 A Yes.

22 Q That was because you believed Mr. Romanowski was
23 someone who would share this information with the union?

24 A Yes.

25 Q Go back now to the very first exhibit, General

1 Counsel Exhibit 47, so go back to the very beginning.

2 A 47?

3 Q Uh-huh.

4 A I start at 61.

5 MR. WIESE: May I approach, your Honor?

6 JUDGE ROSAS: (Nods head.)

7 BY MR. WIESE:

8 Q It should be this one right here?

9 A Oh, I didn't see that. Where would you find the
10 number on it? Oh, I see it.

11 Q It's very small.

12 A Sorry about that.

13 Q That's okay. I'm looking at the handwriting on
14 this document. Do you recognize that handwriting?

15 A Yes.

16 Q Whose handwriting is that?

17 A It is my scroll.

18 Q Can you read what that handwriting says.

19 A It looks like "12 month - non majority.

20 Employees say no to union."

21 Q And then above that, what does it say?

22 A "Start 3/16/18."

23 Q Do you recall what occurred on 3/6 of '18?

24 A I believe that was our first negotiating session
25 with -- I think -- or was that -- that might have been

1 the election.

2 MR. WIESE: Nothing further.

3 JUDGE ROSAS: Charging Party?

4 RECROSS EXAMINATION

5 BY MR. RYAN:

6 Q If I can just have you take a look at General
7 Counsel Exhibit 74 and the line that talks about "the
8 bounds of the 776 market."

9 What's your understanding of the 776 market?

10 A The area that the Racine store covered.

11 Q And what is that area?

12 A Essentially the south -- the south, southeast
13 part of the state, Kenosha, up to just south of the
14 airport, over toward Whitewater, down to the Illinois
15 line.

16 MR. RYAN: That's all I had. Thank you.

17 JUDGE ROSAS: Counsel, any follow-up?

18 MS. HILL: No cross.

19 JUDGE ROSAS: Okay. Thank you, sir. You're
20 excused. You're not to discuss your testimony with
21 anyone until you're advised otherwise by counsel.

22 All right.

23 MR. WIESE: Counsel calls Jason Mayfield.

24 JUDGE ROSAS: Off the record.

25 (Pause in the proceedings.)

1 JUDGE ROSAS: Morning, sir.

2 THE WITNESS: Morning, your Honor.

3 JUDGE ROSAS: Mr. Mayfield, I'll remind you
4 you're still under oath.

5 THE WITNESS: Yes, sir.

6 JUDGE ROSAS: General Counsel.

7 MR. WIESE: Thank you, your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WIESE:

10 Q Good morning, Mr. Mayfield.

11 A Morning.

12 Q So if you look on the table in front of you,
13 there's a manila folder.

14 A Yes.

15 Q And there's some documents in that folder that
16 we're going to be going through in there that are
17 labeled on the bottom center of each page, and they
18 should be in order. And I'd like to start by asking you
19 about General Counsel Exhibit 64. So it will say GCX 64
20 on the bottom middle of the page.

21 A It's cut off, but it says GCX 47.

22 Q Right. So if you go through those documents,
23 they should be in order, and there should be a General
24 Counsel Exhibit 64.

25 A Okay.

1 Q So I'd like to turn to the last page of that
2 exhibit, Page 3. The bottom two lines of that e-mail,
3 do you see that?

4 A I do.

5 Q Okay. And that e-mail is making reference to a
6 phone call, is that right, or a series of phone calls?

7 A I assume based on it says "phone calls."

8 Q And those were phone calls between yourself and
9 Mr. Bogardus?

10 A I do not recall.

11 Q Let's go over to the next document then, General
12 Counsel Exhibit 65. I want to look at the top e-mail
13 there from yourself to Ms. Hill and Mr. Bogardus. Do
14 you see that there?

15 A I do.

16 Q And in this e-mail, you're requesting
17 Mr. Bogardus to visit each of the profit centers in his
18 district, is that right?

19 A Yes.

20 Q Had you requested Mr. Bogardus to do this prior
21 to this e-mail?

22 A This is something we do regularly.

23 Q But had you requested Mr. Bogardus specifically
24 to conduct these sort of meetings?

25 A I don't recall.

1 Q Skip ahead a little bit and go over to General
2 Counsel Exhibit 69. Are you there?

3 A Yes.

4 Q So attached to this e-mail is a flier on Page 3
5 of the document. Do you see that flier?

6 A I do.

7 Q Do you recognize this flier?

8 A No.

9 Q You've never seen this before?

10 A I don't recall. There's been a lot of fliers.

11 Q Do you recall whether Local 139 offered to
12 solicit business on behalf of Sunbelt?

13 A Can you repeat the question.

14 Q Do you recall Local 139 ever offering to solicit
15 business on behalf of Sunbelt?

16 A Define solicit business.

17 MR. WIESE: Your Honor, I object. It's
18 nonresponsive.

19 JUDGE ROSAS: Keep trying to elicit a response,
20 Counsel.

21 BY MR. WIESE:

22 Q Did Local 139 -- do you recall Local 139 ever
23 offering to speak to contractors on behalf of Sunbelt?

24 A Handbill or speak?

25 Q Handbill.

1 A Yes.

2 Q To handbill in a positive manner towards Sunbelt?

3 A I don't recall.

4 Q And looking at the flier on Page 3. Does this
5 appear to be a positive flier or a negative flier?

6 MS. HILL: Objection, opinion, speculation.

7 JUDGE ROSAS: Rephrase.

8 BY MR. WIESE:

9 Q Can you read the top three lines of this flier
10 silently.

11 A Yes.

12 Q Having reviewed those lines, does this flier
13 appear to be a positive flier towards contractors?

14 A "Patronage" could be interpreted as positive.

15 Q Do you recall being involved in any conversations
16 regarding this flier and whether Sunbelt would consent
17 to it being sent out to contractors?

18 A Not that I recall.

19 Q Look over to General Counsel Exhibit 71. This is
20 an e-mail chain regarding scheduling negotiations with
21 the union in November of 2018, is that accurate?

22 A Yes.

23 Q And the union was requesting to meet twice in
24 December of 2018, isn't that right?

25 A That would be inferred based on Page 2, not Page

1 1.

2 Q Okay. If you look at Page 2, the union is
3 requesting to meet twice in December, is that right?

4 A They're asking if we'd be willing to meet for
5 negotiations.

6 Q On December 10th and then December 18th, correct?

7 A Yes.

8 Q And your position was that you could schedule one
9 meeting in December, is that right?

10 A It says that we can schedule one meeting next
11 month based on holidays and vacations.

12 Q And that's what happened, right, the parties only
13 met for negotiations once in December 2018?

14 A Correct.

15 Q If you skip ahead a little bit now to General
16 Counsel Exhibit 76. This is an e-mail concerning
17 collective bargaining negotiations with Local 139, is
18 that correct?

19 A Yes.

20 Q And you were -- your e-mail is requesting that
21 negotiations be done by 2:00, is that right?

22 A Yes.

23 Q And that was 2:00 p.m. in the afternoon, is that
24 right?

25 A Correct.

1 Q And that's what happened at negotiations on March
2 21st, is that right?

3 A I don't recall.

4 Q If you go over to General Counsel Exhibit 79.
5 This is an e-mail chain that you were involved in
6 regarding a union meeting, is that correct?

7 A I'd be speculating.

8 Q So from the face of the e-mail, which is titled
9 "Monday's Union Meeting," you can't identify whether
10 this is regarding a union meeting?

11 A It appears that way.

12 Q The bottom e-mail here, which is from March 28th
13 of 2019 from Mr. Anderson, references "fishing for
14 information." Did you instruct Mr. Anderson to fish for
15 information about this meeting?

16 A I did not.

17 Q Besides the e-mails you received from
18 Mr. Anderson, did you receive any other information
19 about this union meeting?

20 A Not that I recall.

21 MR. WIESE: Nothing further.

22 JUDGE ROSAS: Charging Party?

23 MR. RYAN: Nothing at this time, your Honor.

24 JUDGE ROSAS: Okay.

25 MS. HILL: No follow-up.

1 JUDGE ROSAS: Thank you, sir. You're excused.
2 Please do not discuss your testimony with anyone until
3 you're advised otherwise by counsel. All right?

4 THE WITNESS: Thank you, your Honor.

5 MR. WIESE: I'll call Bryan Anderson to the
6 stand.

7 JUDGE ROSAS: Okay. Off the record.

8 (Recess.)

9 JUDGE ROSAS: Back on the record. Next witness.

10 MR. WIESE: Thank you, your Honor. I'll call
11 Bryan Anderson.

12 JUDGE ROSAS: Sir, you previously testified?

13 THE WITNESS: No.

14 JUDGE ROSAS: You did not. Please raise your
15 right hand.

16 (Whereupon,

17 BRYAN S. ANDERSON,
18 was called as a witness by and on behalf of the General
19 Counsel and, after having been duly sworn, was examined
20 and testified as follows:)

21 THE WITNESS: Yes.

22 JUDGE ROSAS: Please have a seat. State and
23 spell your name and provide us with an address.

24 THE WITNESS: Bryan S. Anderson, B-R-Y-A-N,
25 middle initial S., Anderson, A-N-D-E-R-S-O-N. 510

1 Rolling Meadows Drive, North Fond du Lac, Wisconsin,
2 54937.

3 DIRECT EXAMINATION

4 BY MR. WIESE:

5 Q Mr. Anderson, my name is Tyler Wiese. I'm an
6 attorney with the National Labor Relations Board. I'm
7 going to be asking you a couple of questions today.
8 Okay?

9 A Okay.

10 Q So if you look in front of you, there should be a
11 manila folder.

12 A Uh-huh.

13 Q And if you open that up, I'm going to ask you
14 just a few questions about some of the documents in
15 there.

16 A Okay.

17 Q If you open it up, and you look at the bottom of
18 each page, there should be a GCX and then a number after
19 it. Do you see that?

20 A Yep.

21 Q And if you go a little bit further back in the
22 packet, there should be a GCX 77.

23 A All right.

24 Q They should be in order. Let me know when you
25 get there.

1 A I am there.

2 Q And looking at the first page of this exhibit, it
3 looks like it's an e-mail from pcm776, Manager Racine,
4 Wisconsin. Is that your e-mail address or was that your
5 e-mail address?

6 A At the time it was, yes.

7 Q And you sent that e-mail to Ms. Hill and then
8 someone named Dana Cote. Is that how you pronounce
9 that?

10 A That is my belief, yes. I think I was just
11 replying to an e-mail.

12 Q Do you know who -- is it Mr. or Mrs. Cote?

13 A I do not know.

14 MS. HILL: Your Honor, if I could, it's my
15 assistant, okay. That's all I -- is that who --

16 MR. WIESE: Yes.

17 MS. HILL: Okay. Thank you.

18 BY MR. WIESE:

19 Q And looking at the e-mails here, it appears
20 there's a series of pictures in those e-mails, is that
21 right?

22 A Yes, sir.

23 Q And you took those pictures?

24 A I did.

25 Q And those pictures contain the notice of the

1 decertification election at the Franksville facility?

2 A That is correct.

3 Q All right. Let's go to General Counsel Exhibit
4 79 now.

5 A Okay.

6 Q And this appears to be an e-mail exchange between
7 yourself and Mr. Mayfield, is that correct?

8 A Yes, sir.

9 Q And looking at the bottom e-mail there, the March
10 28th, 2019, 8:03 a.m., you wrote that you're "fishing
11 for information." Do you see that?

12 A I do see that, sir.

13 Q And you were fishing for information about a
14 union meeting, is that correct?

15 A Yes, sir.

16 Q Did someone direct you to fish for that
17 information?

18 A No, sir.

19 Q Why were you fishing for information about the
20 union meeting?

21 A A lot of people were telling me about this, and
22 when they tell me about this, I ask questions.

23 Q And when you say "people," who are you talking
24 about?

25 A I don't recall specifically.

1 Q Would they have been employees at the Franksville
2 facility?

3 A I don't recall, sir.

4 Q So you have no recollection at all about who was
5 talking about this union meeting at this time?

6 A That is correct, sir.

7 Q If you go to the top e-mail here which is one
8 from yourself to Mr. Mayfield with a couple of people
9 cc'd, it makes reference to there being a lot of people
10 at that meeting.

11 A Uh-huh.

12 Q Do you see that? How did you get that
13 information?

14 A I do not recall.

15 Q Did you witness that meeting?

16 A I did not.

17 Q The second line makes reference to "fishing for
18 more information." Do you see that?

19 A I do see that, sir.

20 Q Did you in fact fish for more information about
21 that meeting?

22 A I don't recall.

23 Q Did you have any other communications with any
24 other Sunbelt managers that you can recall regarding
25 that union meeting?

1 A No.

2 Q So just this e-mail? This is it?

3 A I believe so, yes.

4 MR. WIESE: Nothing further.

5 JUDGE ROSAS: Charging Party, anything?

6 MR. RYAN: No, your Honor.

7 JUDGE ROSAS: Anything?

8 MS. HILL: Yes, just to follow up on something
9 that the witness said.

10 CROSS EXAMINATION

11 BY MS. HILL:

12 Q Mr. Anderson, this indicates "pcm776." Was that
13 your title at some point?

14 A That is correct, PC0776 manager, yes.

15 Q And at the time of this e-mail exchange, you were
16 the profit center manager at the Franksville location?

17 A Yes, ma'am.

18 Q And when were you no longer a manager at the
19 Franksville location?

20 A It would be August of 2019.

21 MS. HILL: Thank you. Just to make the record
22 clear, your Honor, on this.

23 JUDGE ROSAS: Anything else?

24 MR. WIESE: No, your Honor.

25 MR. RYAN: No, your Honor.

JUDGE ROSAS: Thank you, sir. You're excused, sir. You're not to discuss your testimony with anyone unless you're otherwise advised by counsel. All right?

THE WITNESS: Yes, sir.

JUDGE ROSAS: All right. Thank you.

General Counsel, any other witnesses?

MR. WIESE: No, your Honor.

JUDGE ROSAS: General Counsel rests?

MR. WIESE: Your Honor, before resting, I'd like to reoffer General Counsel Exhibit 60 which are the bargaining notes that you made a privilege ruling on earlier. I would request that they be included in a rejected exhibit file.

JUDGE ROSAS: Had I ruled on that on the record?

MS. HILL: You ruled on the record, sir, that 546, the back page, that that did include attorney communications and to exclude it because these were my notes.

JUDGE ROSAS: Okay.

MS. HILL: These are not part of the official record.

JUDGE ROSAS: All right. The objection is sustained. The exhibit -- General Counsel 60 is placed in the rejected exhibit folder.

MR. WIESE: Okay.

1 JUDGE ROSAS: Okay. Anything else?

2 MR. WIESE: No, your Honor. General Counsel
3 rests.

4 JUDGE ROSAS: Charging Party, anything?

5 MR. RYAN: We do not have anything to offer at
6 this time. We reserve the right though in the future
7 to --

8 JUDGE ROSAS: All right. Counsel for Respondent,
9 you're on.

10 MS. HILL: I am on, your Honor. If you can give
11 me a moment to look at my notes.

12 JUDGE ROSAS: Okay. We're off the record.

13 (Pause in the proceedings.)

14 JUDGE ROSAS: All right. We're on.

15 MS. HILL: It is often said that there are three
16 certainties in life, death, taxes and that two attorneys
17 will disagree as to what the facts in the law are for a
18 case. It's the latter situation that we have presently
19 in front of you.

20 In Mr. Wiese's opening statement, he stated that
21 Sunbelt frustrated the bargaining by continual delays in
22 scheduling the negotiations and during the negotiations,
23 that the parties could not engage in an honest exchange
24 of proposals.

25 The evidence from the 139 and from Sunbelt has

1 demonstrated, and will demonstrate, that the parties
2 agreed to numerous significant proposals in every
3 bargaining session. Due to the union's dislike for the
4 modern convenience called e-mail, the parties' progress
5 was slowed down considerably. The evidence will show
6 that the union had an archaic disdain even for using
7 direct deposit. The evidence from Local 139 and Sunbelt
8 has, and will continue, to demonstrate that the union
9 demanded that Sunbelt only provide it with written
10 proposals.

11 You will hear that three Sunbelt employees
12 discussed and finalized each proposal, while a fourth
13 member of the Sunbelt negotiation team typed the
14 proposal and cut down a rain forest in order to provide
15 Local 139 what it demanded; however, 139 provided verbal
16 proposals.

17 You have heard, and will hear, how repeatedly
18 inept Local 139's negotiation team was with respect to
19 its preparation for negotiations and during the
20 negotiations themselves.

21 The evidence from Local 139 and Sunbelt will
22 clearly demonstrate that Sunbelt provided explanations,
23 or to use the words in the complaint and in the charges,
24 quote, "justifications," close quote, for its proposals.
25 Sunbelt will show that it repeatedly and carefully

1 explained to Local 139 what Sunbelt's business was all
2 about.

3 The evidence will demonstrate that the
4 decision-maker for the reorganization of the Franksville
5 profit center did not, and does not, have a scintilla of
6 union animus and did not retaliate against the union
7 because of the ULPs filed by Local 139. The
8 overwhelming evidence will lay out the effect of the
9 bannerings and the picketing on the Franksville location
10 and Sunbelt's competition.

11 You will repeatedly hear that business was
12 diverted from Sunbelt to Sunbelt's competitors, all of
13 which are nonunion. One of those competitors has a long
14 history of closing its doors when a union wins a
15 representation election.

16 You have heard, and will continue to hear, that
17 the bargaining unit at the time of the reorganization
18 included two mechanics who were given the opportunity to
19 apply for jobs at other locations but failed to do so.
20 The evidence presented will clearly demonstrate that the
21 union failed those two employees by refusing to bargain
22 on two occasions regarding the reorganization.

23 The evidence has shown, and will continue to
24 demonstrate, that the Franksville profit center is doing
25 work in accordance with the past practice and the

1 information provided to the Local 139 during our August
2 bargaining sessions. There was a large-scale
3 restructuring of the Franksville business based on the
4 actions of the 139. Accordingly, there's no evidence
5 that Sunbelt did anything unlawful. Thank you.

6 JUDGE ROSAS: Okay. Off the record.

7 (Lunch recess.)

8 JUDGE ROSAS: Counsel --

9 MS. HILL: Yes, sir.

10 JUDGE ROSAS: -- first witness.

11 MS. HILL: Yes. Mr. Bogardus, please.

12 JUDGE ROSAS: And sir, you've been previously
13 sworn.

14 THE WITNESS: Yes, sir.

15 DIRECT EXAMINATION

16 BY MS. HILL:

17 Q Mr. Bogardus, on or about March 22nd, 2019, did
18 you instruct any of the Sunbelt employees to tell you
19 about union activities of other Sunbelt employees?

20 A No, ma'am.

21 Q On or about April 22nd or 23rd, 2019, did you
22 interrogate any Sunbelt employees at any of the
23 locations in Wisconsin about their union sympathies?

24 A No, ma'am.

25 Q On or about April 22nd or 23rd, 2019, did you

1 interrogate Sunbelt employees in Wisconsin about their
2 union activities?

3 A No, ma'am.

4 Q Did you attend all of the negotiation sessions?

5 A Yes, ma'am.

6 Q How was Sunbelt first notified about the
7 negotiations?

8 A When you say "first notified," are you talking
9 about the notification that the union or the -- yeah,
10 that the guys that signed the cards that there was going
11 to be a vote or the negotiation fees?

12 Q The -- and I apologize for the poor question.
13 When were you first notified by the 139 that they
14 wanted to actually, after the election, actually wanted
15 to sit down to negotiate a contract?

16 A Middle of March, give or take, I guess, a week or
17 so after the election.

18 Q And do you recall what Sunbelt's response was to
19 that?

20 A We were coming up on year-end. Our year-end's in
21 April, and that's a very busy time, our fiscal year,
22 it's a very busy time for us, so we asked for a little
23 bit of forbearance to get through that piece, and then
24 we can try to get negotiations scheduled immediately.

25 Q And why was that a busy time of the year, sir?

1 A It's the end of our fiscal year. We're coming
2 out of the winter lull, if you will, on the General Tool
3 side, and the activity level is picking up significantly
4 at the same time as we're closing out the fiscal year,
5 so it makes it very, very challenging for the managers
6 as we're trying to close out the old year and work our
7 way through the new year.

8 Q And did you prepare anything, any documents, any
9 notes or anything during negotiation sessions?

10 A Yes, I've got my notes that I put together as we
11 were having those conversations.

12 Q Okay. Now, I believe in the NLRB's case in
13 chief, they showed you a document that was -- it looked
14 like a cover of a union contract, and you identified
15 handwriting on that, sir.

16 A Correct.

17 Q Would you please look at Respondent's -- and you
18 should have a binder there.

19 A Yes.

20 Q Okay. And look at No. 7, please.

21 A Okay.

22 Q And do you recognize that, sir?

23 A Yes.

24 Q Now, there appears to be quite a few pages there,
25 correct?

1 A Yes, ma'am.

2 Q All right. And what is that? And I'm referring
3 to -- and if you look at the lower right-hand corner,
4 you'll see some numbers. The first one should be I
5 believe about -- with the cover and then the very last
6 one, maybe around 1389, I believe.

7 A You're talking about the very last one in Tab 7?

8 Q Yes, sir, under Tab 7.

9 A Yes, 1389 are the last four digits.

10 Q Okay. Any of the handwriting on those pages not
11 yours, sir?

12 A I'll be a minute.

13 Are there pages that are supposed to be blank?

14 Q Which one are you referring to, sir?

15 A There's pages that are blank. 1271 are the last
16 four digits.

17 Q I think that was the last page of the proposal
18 most likely.

19 A 1275, the same.

20 Q But no handwriting on those two blank pages,
21 correct?

22 A No. 1279, 1283, no handwriting, and they're
23 blank. I just want to make sure you know they're
24 blanks.

25 Q Uh-huh. They're numbered?

1 A Yes. 1357 has got notes from me in the top, but
2 at the bottom, I believe that was Steve Buffalo and
3 Jason on the wording on the bottom of that page.

4 Q Thank you.

5 A Other than the one called out, those all appear
6 to be my notes.

7 MS. HILL: Your Honor, Respondent requests to
8 admit what has been marked as Respondent's Exhibit No.
9 7, sir.

10 JUDGE ROSAS: Any objection? Voir dire?

11 MR. WIESE: No objection, your Honor.

12 JUDGE ROSAS: Respondent's 7 is received.

13 MS. HILL: Thank you, your Honor.

14 (Respondent's 7 was received.)

15 BY MS. HILL:

16 Q At any time between March 1st of 2018 and the
17 present, were you ever told that Sunbelt did not have an
18 intention of reaching an agreement with Local 139?

19 A No, ma'am.

20 Q Did 139 ask to negotiate wages?

21 A Yes, ma'am.

22 Q And did Sunbelt agree to negotiate wages?

23 A Pursuant to all other articles being negotiated,
24 yes.

25 Q Did Sunbelt refuse to negotiate with the Local

1 139 at reasonable times?

2 A Not that I'm aware, no.

3 Q Did Sunbelt refuse to negotiate with the Local
4 139 at reasonable places?

5 A No, ma'am.

6 Q Did the union ever -- Local 139 ever ask the
7 Sunbelt negotiating team to negotiate someplace else?

8 A They suggested their -- their hall or perhaps a
9 hotel a couple times. I don't remember the dates.

10 Q And do you recall why Sunbelt did not agree to
11 that suggestion?

12 A The union at the very beginning required any
13 proposals, any counters that Sunbelt was to make had to
14 be made in writing, and it was determined that the
15 smartest thing we could do is use the facility there at
16 776, Racine, the Franksville store, because we had a
17 conference room that -- the climate control of the air
18 could be better, but beyond that, we happened to put all
19 of our counterproposals in writing. It was easier for
20 us to work out of Bryan's office, as the PCM, work out
21 of his office and print up the proposals and be able to
22 take copies back in for review.

23 Q Thank you. Did the union ever ask Sunbelt for
24 justifications for the proposals that Sunbelt made?

25 A My head tells me yes, but I can't cite chapter

1 and verse.

2 Q Was the -- who was on the union's negotiating
3 team?

4 A You had Jamie Smith, there was the Sunbelt
5 driver, Mike Ervin, Greg West, Steve Buffalo and Dan
6 Marsolek.

7 Q And did that negotiating team change from time to
8 time?

9 A If I remember correctly, Mr. McGowan came in I
10 think once or maybe twice, but I'm sure he was there
11 once.

12 Q Was there ever a time that the union's
13 negotiating team was not prepared for negotiations?

14 MR. WIESE: Objection, leading.

15 JUDGE ROSAS: I'll allow that.

16 You can answer if you know.

17 THE WITNESS: It didn't seem like they had
18 reviewed several times, that they had reviewed what we
19 had done previously. Quite frankly, it was left up to
20 us to bring back the notes and to review, I guess, or to
21 give an overview of what we'd done the last time as we
22 went into the next negotiating session.

23 BY MS. HILL:

24 Q You mentioned that Mr. McGowan was at one,
25 perhaps two negotiation sessions. Do you recall

1 anything that Mr. McGowan said at a negotiation session?

2 A You know, there was a couple times that -- a
3 couple things that I remember. One of them was, you
4 know, we can give you Foxconn. Well, my opinion was
5 that we weren't going to pursue Foxconn. We were going
6 to pursue the local contractors' business to develop a
7 support -- a firm foundation for that store, so him
8 spouting on that he was going to be able to do that
9 didn't mean anything to me.

10 There's something that's tickling my head, but I
11 can't -- it's not strong enough for me to really make --
12 voice an opinion on it.

13 Q With respect to Foxconn, I believe you had
14 testified earlier about budget, that the Franksville
15 location had a budget, correct?

16 A That is correct.

17 Q Were you involved in preparing the budget?

18 A I was involved in preparing the budget for fiscal
19 year -- our fiscal year starts in May, so I would have
20 been involved in the fiscal year '19 and fiscal year
21 '20.

22 Q During any of those budgets that you helped to
23 prepare, was Foxconn part of that budget?

24 A No.

25 Q Sir, are you aware of a decertification petition

1 that was filed with the National Labor Relations Board?

2 A Yes, ma'am.

3 Q And what do you know about that decertification
4 petition, sir?

5 A When the union decided to start their bannering,
6 or whatever it is they call it, informational service,
7 we started seeing equipment come back because of the
8 threats of the union allegedly made to our customers.
9 The customers were the ones who told us they made those
10 threats.

11 We had -- yeah, Mario Rivera came when the
12 equipment -- came to me when the equipment started
13 coming back, and he said something to the effect -- I
14 won't go into Mario's exact vernacular -- what are they
15 doing.

16 And I said well, you know, it's one of the things
17 that they can do is advertise that there's a dispute
18 between us and the union. Okay, what can I do about
19 that. I said call the NLRB. And he said what's that.
20 I said you're going to have to call the NLRB.

21 Q Did you ask anyone, any of the Sunbelt employees
22 to file a decertification petition?

23 A No, ma'am.

24 Q Now, Mr. Bryan Anderson became the profit center
25 manager at the Franksville location approximately when,

1 sir?

2 A June, July of '18, late June, early July.

3 Q When Mr. Anderson started, did you have anything
4 to do with training him, getting him up to speed on the
5 Franksville location?

6 A Bryan had been the operations manager for the
7 district for a couple of years prior to me coming out,
8 and he had very solid fleet knowledge, very solid
9 operations guy, so he didn't really need a lot of help
10 from me. In fact, I just kind of stayed out of his way
11 so he could get his job down.

12 Q You talk about fleet. When Mr. Anderson started,
13 did he -- did you discuss with him the fleet for the
14 Franksville location?

15 A Based on what was going on with the negotiations
16 and the perception of where we were, we did not choose
17 to increase the fleet. In fact, we started to pull it
18 down.

19 Q Was the customer -- how did the customer base for
20 Franksville compare to the other profit centers in
21 Wisconsin?

22 A It had a similar contractor base, but there was a
23 base of smaller contractors, home builders and
24 homeowners that would rent smaller equipment because
25 it's a pretty handy location right there off the 94, so

1 we had a -- we had a walk-in presence there that we
2 didn't have in other places.

3 Q Did you attend the July 2019 negotiation session?

4 A Yes, ma'am.

5 Q Can you describe what it was?

6 A If I remember correctly, that was where you were
7 supposed to have gotten an Excel -- or not an Excel
8 file, a Word file of the TA'd agreement -- or the
9 agreement, you know, that would have been TA'd prior to
10 so that we could review it.

11 The folks on the union side were upset,
12 perturbed, they were not happy with the fact that you
13 didn't have that, but from what I understand, you did
14 not receive it.

15 Q And approximately how long did that negotiation
16 session last?

17 A Well, after we determined that we hadn't got the
18 file, and there wasn't really anything to go over, and I
19 was called a liar by Mr. Marsolek, I think it all lasted
20 maybe eight to ten minutes.

21 Q Did you ever hear -- first of all, do you know
22 Chris Pender?

23 A Yes.

24 Q Did you ever hear Mr. Pender say that the union
25 would not get into the Franksville profit center?

1 A I did not -- I've never heard Chris say that, no.

2 Q Were you involved in the decision to reorganize
3 the Franksville location in August of 2019?

4 A I was advised that it was going to happen, yes.

5 Q And who advised you of it?

6 A Jason Mayfield.

7 Q Do you recall when you were advised of that?

8 A A couple of days before.

9 MS. HILL: No further questions of this witness,
10 your Honor, at this time.

11 JUDGE ROSAS: Cross?

12 MR. WIESE: Can I have a couple minutes to
13 prepare, your Honor?

14 JUDGE ROSAS: Sure. Off the record.

15 (Pause in the proceedings.)

16 CROSS EXAMINATION

17 BY MR. WIESE:

18 Q Mr. Bogardus, I'd like to have you look at -- it
19 would be Page 1358 of Respondent's Exhibit 7 which you
20 testified were your bargaining notes.

21 A Yes.

22 Q Let me know when you're there.

23 A I'm good.

24 Q And if you flip through the following pages of
25 that document, you would agree with me that this was the

1 union's proposal that they made at the June 5th, 2019
2 bargaining session, does that sound right?

3 A I'm going to hedge and say that I dated it as of
4 7/2 because that's when we reviewed it, so I don't know
5 if you're asking if this was the one they produced on
6 the 25th and we reviewed it on the 2nd.

7 Q Okay. And I guess that gets to my point. You do
8 recall reviewing this document on July 2nd, 2019?

9 A Yes.

10 Q And that was before the July 9th bargaining
11 session?

12 A Yes.

13 Q Who did you review that document with?

14 A If I remember correctly, we were going through
15 this pretty much line-by-line, article-by-article, and
16 that's where I was making my notes, you know, that it
17 matched and it was definitely -- as we were getting
18 through that, Pat made the suggestion --

19 MS. HILL: Ah, objection, move to strike,
20 attorney-client privilege. Sorry.

21 JUDGE ROSAS: So you continue from that point on
22 after consultation with your attorney.

23 THE WITNESS: It was determined that the smartest
24 attack would be to have a -- have the union produce the
25 digital file, you know, the Word file for comparison.

1 BY MR. WIESE:

2 Q And along besides Ms. Hill, who else was present
3 for that review?

4 A Bryan Anderson was there, and I'm pretty certain
5 Jason was there. I think all four of us were there.

6 Q And you went through this proposal line-by-line
7 then?

8 A For the most part.

9 Q I'm going to have you look at the binder with the
10 General Counsel exhibits, so it should be in front of
11 you. The black one up there.

12 A I don't know what this page is.

13 Q That's okay. I'm going to have you first look at
14 General Counsel Exhibit 7A, please.

15 A Okay.

16 Q Are you there?

17 A Yes.

18 Q Okay. And if you'll turn over to Page 2 of that
19 document.

20 A Okay.

21 MS. HILL: I'm going to object, beyond the scope.

22 JUDGE ROSAS: What does this relate to as far as
23 his direct examination?

24 MR. WIESE: It relates to the collective
25 bargaining negotiations which he made -- he testified

1 about as part of his direct.

2 JUDGE ROSAS: Give me some specifics.

3 MR. WIESE: Well, there were broad-sweeping
4 statements about what the union -- whether the union
5 requested justifications for any proposals, whether --

6 JUDGE ROSAS: Okay. This is related to that
7 question?

8 MR. WIESE: It's related to the proposals that
9 were made at the bargaining table. I believe that it's
10 within the scope because, again, the collective
11 bargaining negotiations were discussed in broad-sweeping
12 terms.

13 I would like to ask this witness some specific
14 questions about specific proposals and whether he has
15 any recollection of discussions around those proposals
16 and whether justifications were provided.

17 JUDGE ROSAS: Okay. Overruled.

18 You can answer.

19 THE WITNESS: You'll have to give it to me again.

20 BY MR. WIESE:

21 Q Okay. Not a problem. So looking at General
22 Counsel Exhibit 7A, Page 2 --

23 A Right.

24 Q -- this is identified as an employer proposal
25 that was made on May 22nd, 2018. Do you recognize this

1 document as such?

2 A Yes.

3 Q And this was the union's proposal for dues at
4 that time? Or excuse me. The employer's proposal?

5 A Yes.

6 Q And looking below that, there's a notation TA
7 6-28-18. Do you recall there being a tentative
8 agreement over this proposal?

9 A I didn't see it in mine, so I don't recall.

10 Q Okay. So I'd like to have you turn now to
11 General Counsel Exhibit 7H.

12 A Okay.

13 Q This was identified as a Sunbelt proposal on
14 February 21st of 2019. Do you recognize it as such?

15 A Given the fact that I see the date here and the
16 proposal, I'd have to say yes, but do I remember this
17 specific, no.

18 Q So you don't recall on February 21st Sunbelt
19 presenting this proposal during the collective
20 bargaining negotiation?

21 A I do not recall, no.

22 Q Do you recall any discussion about dues at the
23 February 21st, 2019 negotiation?

24 A There were a couple of discussions, and I don't
25 know if it was the 21st, but yeah, there were dues

1 discussions.

2 Q Do you recall whether any Sunbelt negotiators
3 highlighted any changes that were in this proposal in
4 General Counsel Exhibit 7H from prior dues proposals?

5 MS. HILL: Objection, form, foundation.

6 JUDGE ROSAS: Repeat that.

7 BY MR. WIESE:

8 Q I asked the witness do you recall whether any
9 negotiators from Sunbelt highlighted any changes in
10 General Counsel Exhibit 7H, dues proposal, from any
11 prior dues proposals?

12 JUDGE ROSAS: Do you understand the question?

13 THE WITNESS: I think. Did we revise the -- what
14 was it, the 29th? Here's what I remember, okay. I'll
15 just tell you exactly what I remember as far as the
16 dues.

17 BY MR. WIESE:

18 Q Sure.

19 A I had no intention of ever collecting them. That
20 was up to the union. Now, obviously there are others
21 that could have overrode me, but that's where I was.

22 Q Did you state that to the union at the bargaining
23 table?

24 A I don't know that I did and I don't know that I
25 didn't.

1 MR. WIESE: Nothing further.

2 JUDGE ROSAS: Charging Party?

3 MR. RYAN: I don't think I have anything at this
4 time. Thank you, your Honor.

5 JUDGE ROSAS: Any redirect?

6 MS. HILL: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MS. HILL:

9 Q Mr. Bogardus, if you would look at General
10 Counsel Exhibit 7H.

11 A Okay.

12 Q I believe you were just looking at that.

13 A Yes, ma'am.

14 Q Is the handwriting in the upper left-hand corner
15 yours, sir?

16 A No, ma'am.

17 Q And I believe he asked you about 7A also in the
18 same binder.

19 A Yes.

20 Q Is the handwriting on that page yours?

21 A No, ma'am.

22 Q So sitting here today, you don't know if the
23 information written on this is correct?

24 A I do not.

25 Q Now, if you would please look at Respondent's

1 Exhibit 7. This is the one in the other binder, and
2 it's --

3 A Oh.

4 Q -- the one with your notes in it that you
5 identified -- there you go.

6 A Okay.

7 Q And Mr. Wiese asked you about Pages 1358 to 1386.
8 Now, directing your attention to Page 1372 of this
9 exhibit, sir.

10 A Yes, ma'am.

11 Q What are the dates that you have written in the
12 right-hand column?

13 A "7/9/19."

14 Q And is that the date when you had personally
15 reviewed this?

16 A Wherever you see my initials and you see a date,
17 that's the date that I read it and initialed it.

18 Q And when you said that you had reviewed it
19 line-by-line, you're referring to you yourself did it,
20 correct?

21 A Yes, ma'am.

22 Q And looking at 1387, this is all your
23 handwriting, correct?

24 A Give me a second to get there, please.

25 Yes, ma'am.

1 Q And this would reflect what you referred to as a
2 short negotiation session on July 9th, correct?

3 A Yes, ma'am.

4 MS. HILL: No further follow-up questions, your
5 Honor.

6 JUDGE ROSAS: Any further cross?

7 MR. WIESE: Just briefly, your Honor.

8 RECROSS EXAMINATION

9 BY MR. WIESE:

10 Q Mr. Bogardus, if you'll look at Page 1360 of
11 Respondent Exhibit 7.

12 MS. HILL: Now we're definitely beyond the scope.

13 JUDGE ROSAS: Well, Respondent 7 -- you're
14 following up on counsel's questions on redirect, I
15 assume?

16 MR. WIESE: Correct, right.

17 MS. HILL: I didn't ask about this one.

18 JUDGE ROSAS: Well, let's see where it goes. You
19 can move to strike.

20 BY MR. WIESE:

21 Q So looking at your handwriting on the right-hand
22 side of this document, I just want to clarify that.
23 That says "7/2/19," is that correct?

24 A That is correct.

25 Q And that would reflect the date that you reviewed

1 this document?

2 A That is correct.

3 Q Along with other members of your bargaining team?

4 A I've got it in my head that we were sitting at
5 the table going through these.

6 Q And you were sitting at the table going through
7 it on July 2nd of 2019?

8 A Yes.

9 MR. WIESE: Nothing further.

10 JUDGE ROSAS: Charging Party, anything?

11 MR. RYAN: Nothing further, your Honor.

12 MS. HILL: And move to strike because we did
13 not -- I did not ask questions about this particular
14 document, page.

15 JUDGE ROSAS: Well, do you want to proffer that
16 line?

17 MR. WIESE: We were asking about the document as
18 a whole, and we should be able to ask about any portion
19 of the document.

20 JUDGE ROSAS: In terms of what he signed, whether
21 he saw it that day or initialed it that day, that's
22 fine. I'll receive it. Overruled.

23 MS. HILL: All right.

24 JUDGE ROSAS: Okay. Is that it for this witness?

25 MS. HILL: That's it.

1 JUDGE ROSAS: Thank you, sir. You're excused.
2 Please do not to discuss your testimony with anyone
3 until you're advised by counsel that the case is closed
4 or otherwise. Okay?

5 THE WITNESS: Okay. Thank you.

6 JUDGE ROSAS: Thank you.

7 THE WITNESS: Am I good to go?

8 MS. HILL: You're good to go.

9 JUDGE ROSAS: Off the record.

10 (Pause in the proceedings.)

11 JUDGE ROSAS: We're back on the record?

12 MS. HILL: Yes, sir.

13 JUDGE ROSAS: All right. Next witness, Counsel?

14 MS. HILL: Next witness for the Respondent is
15 Jason Mayfield.

16 JUDGE ROSAS: Mr. Mayfield, I'll remind you that
17 you're still under oath.

18 THE WITNESS: Yes, sir. Thanks, your Honor.

19 DIRECT EXAMINATION

20 BY MS. HILL:

21 Q Mr. Mayfield, currently who is the district
22 manager in Wisconsin?

23 A I am the acting district manager.

24 Q And why is that?

25 A We're searching for a replacement.

1 Q How many interviews have you had for the job?

2 A A handful already.

3 Q And when you started as the regional vice
4 president, who was the profit center manager for
5 Franksville?

6 A Katie.

7 JUDGE ROSAS: Counsel, we have a lot of this out
8 already, so you can lead on perfunctory stuff. Okay?

9 MS. HILL: Okay.

10 BY MS. HILL:

11 Q After Ms. Torgerson left Franksville as the
12 profit center manager and Mr. Anderson came in, were
13 there any substantive changes to the profit center at
14 Franksville?

15 A Like?

16 Q Well, for example, employees.

17 A There were several employees already there at the
18 time that Bryan Anderson took over.

19 Q Anything to do with the fleet?

20 A There were fleet adjustments being made.

21 Q And why?

22 A In a prior model that was reviewed for that
23 location, that location displayed a uniqueness about it
24 in that the fleet composition could be more based around
25 small equipment, small tools and increase their

1 profitability.

2 Q What do you mean increase profitability?

3 A The area which that store was situated allowed
4 for a lot of will call, small equipment-type rental
5 opportunities as to create customer convenience, where a
6 lot of other stores nationwide let's just say don't have
7 those same opportunities.

8 Customers are constantly going by on the
9 thoroughfare, on the highway there, and they would go in
10 and pick up equipment or we'd be able to deliver
11 equipment in the immediate geography.

12 Q Well, you discussed small equipment. The large
13 equipment -- that location when Mr. Anderson started had
14 large equipment, too, correct?

15 A It did.

16 Q Did you make any changes to the large equipment
17 there?

18 A Yeah. The large equipment was being shifted out
19 in order to transition into a more profitable location.
20 It was found that those larger assets may have been
21 suppressing some of their opportunities.

22 Q Could you explain that because -- all right. A
23 big piece of equipment --

24 A Yeah.

25 Q -- would rent -- you would agree it would rent

1 for more money than let's say a small light tower?

2 A Yes, that is true. The larger assets do generate
3 larger dollars in revenue or sales if you will. The
4 smaller ones may generate a lesser dollar amount, but a
5 greater return based on the first cost of the machine of
6 what you paid for it.

7 Q Could you explain that, please.

8 A So if you had an asset or a unit that cost
9 \$10,000, over its life you could generate a 100 percent
10 or a 200 percent return in the first year of useful
11 life. A \$200,000 piece of equipment, you may only
12 generate \$30,000 on its first year of life. Larger
13 dollars, lesser returns.

14 Q And why were you making that adjustment between
15 the large and the small equipment at Franksville?

16 A So there's a region operations manager, Dan
17 Atwell, that Dan Atwell in the past, in 2000 -- even
18 going back to 2018 had done a model where he had broken
19 down the different types of compositions and which ones
20 produce the greatest return, and it was identified that
21 that was an opportunity.

22 Q As part of the negotiation team for Sunbelt, what
23 information did the Local 139 ask Sunbelt to provide?

24 A I'm sorry. Could you repeat the question.

25 Q As a member of Sunbelt's negotiation team, what

1 information did Sunbelt's negotiation team get -- what
2 were they requested to produce to the 139?

3 A Positions, hourly wages, hours worked, two years
4 of history on how many hours they did work over that
5 12-month period.

6 Q And did Sunbelt's negotiation team produce that?

7 A Yes.

8 MS. HILL: All right. Now, your Honor and
9 Mr. Wiese, I don't know how you want to handle this,
10 perhaps a stipulation, because we have the two binders
11 of the handbook, the policy, the -- lots of information
12 about benefits that was provided to the union. As I
13 said before, Mr. Ervin had said that he had received a
14 lot of that information before even the first
15 negotiation session.

16 Can we stipulate that those Exhibits 36, 37, 38
17 and the job descriptions, 12 through 15, and then the
18 benefits, 16 through 38, that includes the safety manual
19 also, could we stipulate to those being exhibits?

20 JUDGE ROSAS: Has General Counsel seen these?

21 MR. WIESE: Well, they were just --

22 MS. HILL: Yes, they've been produced before. He
23 has the binders.

24 JUDGE ROSAS: So you're familiar with the
25 exhibits that she's referencing?

1 MR. WIESE: Well, I don't know if I've seen all
2 of these documents, your Honor.

3 JUDGE ROSAS: Let's just go through them. Let's
4 just go through them. Are you going to ask him
5 questions about each of these or you're going to bypass
6 this?

7 MS. HILL: Well, I can ask him questions about
8 them.

9 JUDGE ROSAS: No. If the General Counsel
10 stipulates to their receipt, is that going to obviate
11 the need for questioning --

12 MS. HILL: Oh, yes --

13 JUDGE ROSAS: -- or are you going to have
14 questioning about them?

15 MS. HILL: -- yeah, absolutely.

16 JUDGE ROSAS: Okay. Why don't we go off the
17 record. Why don't you look at this stuff.

18 (Discussion held off the record.)

19 JUDGE ROSAS: Back on record.

20 All right. So do we have a stipulation?

21 MR. WIESE: I object to the relevance of all of
22 this information. I mean it's thousands of pages of
23 documents that there's no information request at issue
24 in this case. I mean we haven't pled a failure to
25 provide information by Sunbelt.

1 I don't know why we need to burden the record
2 with again thousands of pages of policy information in
3 order to -- in order to establish that the employer
4 provided information to the union when that's not an
5 issue in this case.

6 JUDGE ROSAS: Okay. Relevance, what's the
7 relevance?

8 MS. HILL: Relevance is, number one, they're
9 accusing Sunbelt of not being prepared, not having
10 justifications for its proposals and also, you know, not
11 providing them with information for negotiations that
12 would be productive.

13 Sunbelt provided the job descriptions, the
14 information that Mr. Mayfield just discussed, when it
15 was requested. All the benefit information, that was
16 provided prior to the first negotiation session. The
17 handbook was, too. And so those policies, procedures,
18 benefits, everything provided a justification for the
19 positions that Sunbelt had for their proposals during
20 negotiation. This is very relevant.

21 And if I could also add, your Honor, one of the
22 allegations is that Sunbelt was bargaining with no
23 intention of reaching an agreement. We provided a lot
24 of documents, the handbook, things like that.
25 Everything indicated that Sunbelt was ready to reach an

1 agreement with the union. And we can also have this
2 witness testify about these type of documents being
3 produced throughout his region.

4 JUDGE ROSAS: Are the documents dated?

5 MS. HILL: As to when they were given to the
6 union?

7 JUDGE ROSAS: Correct.

8 MS. HILL: These exhibits are not. But they were
9 provided to the union during negotiations. We can have
10 the union representatives on Thursday go into great
11 detail about that. Mr. Ervin I believe --

12 JUDGE ROSAS: What are the exhibits?

13 MS. HILL: Okay. Job descriptions --

14 JUDGE ROSAS: No. Give me the numbers of the
15 Respondent's exhibits.

16 MS. HILL: They are R 12, 13, 14, 15. Those are
17 the job descriptions.

18 JUDGE ROSAS: Hold on. 12, 13, 14, 15, okay. I
19 see these. Go ahead. These are dated.

20 MS. HILL: All right.

21 JUDGE ROSAS: Well, these are not dated, but --

22 MS. HILL: They were provided.

23 JUDGE ROSAS: So if these go into the record, do
24 we know when they were provided?

25 MS. HILL: During one of the negotiation

1 sessions. Off the top of my head, your Honor, I'm
2 sorry, I cannot give you that date.

3 JUDGE ROSAS: So you're going to have that
4 clarified through a witness?

5 MS. HILL: I can.

6 JUDGE ROSAS: Do you have any doubt that these
7 were provided?

8 MR. RYAN: No, your Honor. They were provided.

9 JUDGE ROSAS: Okay. It's just a question of
10 when.

11 MR. WIESE: No, your Honor.

12 JUDGE ROSAS: Okay. So it's a question of
13 when --

14 MS. HILL: And it was during negotiations, those
15 were.

16 JUDGE ROSAS: Okay.

17 MS. HILL: The benefits were provided prior to
18 the first negotiation session. Mr. Ervin can -- I can
19 check his testimony, but I believe he testified --

20 JUDGE ROSAS: Well, there has to be some context.
21 You're going to provide context as to the date for each
22 of these at some point?

23 MS. HILL: Well, I can, yes, your Honor.

24 JUDGE ROSAS: Okay. We don't --

25 MS. HILL: All right. We know when the first

1 negotiation session was. Everyone has discussed that
2 quite a bit, has testified to it. The union had this by
3 the first negotiation session.

4 MR. RYAN: Yes.

5 JUDGE ROSAS: These were produced on one
6 occasion, on one specific occasion?

7 MS. HILL: Yes, all these benefits, right, so
8 that --

9 JUDGE ROSAS: All right. So these will be
10 received contingent on that date being established
11 before the record closes.

12 MS. HILL: Before someone other than Mr. Ervin --

13 JUDGE ROSAS: Before the record closes.

14 MR. RYAN: I'm sure we can find that date and
15 stipulate to it.

16 JUDGE ROSAS: All right. That's 13, 14 and 15,
17 right?

18 MS. HILL: Okay.

19 JUDGE ROSAS: And then what --

20 MS. HILL: Well, that is -- what he was just
21 saying, all the benefits and that, that's Exhibits 16
22 through 35.

23 JUDGE ROSAS: These are Respondent's?

24 MS. HILL: Respondent's, yes, sir. There's a
25 table of contents that has a brief description along

1 with the Bates numbers for it.

2 JUDGE ROSAS: Okay. So we don't have dates on
3 these documents either?

4 MS. HILL: Some of them, yes, sir, they do have
5 effective dates on them. Do they indicate the date that
6 they were presented to the union? No. Will witnesses
7 know -- be able to testify that they were presented
8 before the first session? Yes, sir.

9 JUDGE ROSAS: Okay. So Respondent 16 through 35,
10 General Counsel and Charging Party, do you have any
11 doubt that these were the documents that were provided
12 at some juncture during bargaining?

13 MR. WIESE: I'll defer to the Charging Party on
14 that.

15 MR. RYAN: We'll confirm they were provided, and
16 I can -- the union would stipulate that they were
17 provided by -- along with a letter dated May 14 of 2018
18 was when we were received them.

19 JUDGE ROSAS: Okay. 16 through 35 --

20 MS. HILL: That's what I was thinking that they
21 were --

22 JUDGE ROSAS: Okay. So 16 through 35 will be
23 received.

24 MR. RYAN: And actually, your Honor, that date
25 applies to 12 through 15 as well.

1 JUDGE ROSAS: It does, okay.

2 MS. HILL: Yes.

3 MR. RYAN: All of these --

4 JUDGE ROSAS: Okay. So that takes care of that.

5 12 through 15 are received over objection, as well as 16
6 through 35.

7 Is there an objection there, Counsel?

8 MR. WIESE: The same objection as to relevance.

9 JUDGE ROSAS: Okay. So that's overruled.

10 (Respondent's 12-35 were received.)

11 MS. HILL: Okay. And then we have the
12 information handbook, Mr. Ryan, and also the policies
13 and safety manual.

14 MR. RYAN: Correct, those were also provided on
15 the 14th.

16 JUDGE ROSAS: What exhibits are these?

17 MS. HILL: Yeah, 36, 37, 38, sir.

18 JUDGE ROSAS: General Counsel?

19 MR. WIESE: The same objection, relevance.

20 JUDGE ROSAS: And you said the date is
21 specifically May?

22 MR. RYAN: Yes. These were also provided May 14
23 of 2018.

24 JUDGE ROSAS: All right. General Counsel, you
25 object to their receipt?

1 MR. WIESE: Yes.

2 JUDGE ROSAS: It's not relevant because you
3 didn't file an information request or failure to provide
4 information charge?

5 MR. WIESE: That's correct, your Honor.

6 JUDGE ROSAS: Okay. Overruled. I'll receive all
7 these documents.

8 (Respondent's 36-38 were received.)

9 Okay. Do you have any other questions of this
10 witness?

11 MS. HILL: Yes, sir, quite a few.

12 JUDGE ROSAS: Okay.

13 BY MS. HILL:

14 Q And Mr. Mayfield, you prepared notes based on the
15 negotiation sessions you attended, correct?

16 A Yes.

17 Q Would you please -- there are two binders in
18 front of you. One is marked for Respondent's exhibits
19 and one for -- I believe it says General Counsel or
20 maybe --

21 A General Counsel in blue, Respondent's in black.

22 Q Okay. Look at the black one, please, and go to
23 the tab R 4, sir. And do you recognize what is R 4,
24 sir?

25 A These are my negotiation notes.

1 Q And they're all in your handwriting, sir?

2 A Yes.

3 MS. HILL: Sir, your Honor, at this point I would
4 like to have admitted Exhibit 4, R 4.

5 MR. WIESE: One minute.

6 JUDGE ROSAS: Objection? Voir dire?

7 MR. WIESE: One minute, your Honor.

8 JUDGE ROSAS: Sure.

9 MR. WIESE: No objection.

10 JUDGE ROSAS: Charging Party, anything?

11 MR. RYAN: No objection.

12 JUDGE ROSAS: Okay. Respondent's 4 is received.

13 MS. HILL: Thank you, your Honor.

14 (Respondent's 4 was received.)

15 BY MS. HILL:

16 Q Mr. Mayfield, when was the first negotiation
17 session between Sunbelt Rentals and Operating Engineers
18 139?

19 A May 22nd.

20 Q Of what year, sir?

21 A 2018.

22 Q Thank you.

23 JUDGE ROSAS: Sir, are you looking at a document?

24 THE WITNESS: Am I supposed to, sir?

25 JUDGE ROSAS: No, unless she needs you to refresh

1 recollection. I'm assuming questions are based on your
2 present recollection.

3 MS. HILL: Right, present recollection. I was
4 going to ask him to review certain ones if he didn't
5 remember precisely.

6 BY MS. HILL:

7 Q To the best of your recollection, sir, what was
8 discussed during that first negotiation session?

9 A We went through the current state of the Local
10 139, members, retirees, percentage of the pension
11 funded, table of contents. That's what I recall.

12 Q Was anything else discussed?

13 A I don't recall.

14 Q And did the union provide any documents to
15 Sunbelt for that first negotiation session?

16 A It was a -- their proposal for a CBA.

17 Q Was that the first time that you had seen their
18 proposal for the Collective Bargaining Agreement, sir?

19 A Yes.

20 Q Was there anything else that the union had
21 provided to Sunbelt's negotiation team that day?

22 A There was a list given to us of how the
23 negotiation sessions would take place.

24 Q All right. If you would please look at the other
25 binder and look at General Counsel Exhibit 15.

1 A Okay.

2 Q All right. Do you recognize General Counsel
3 Exhibit No. 15?

4 A Yes.

5 Q What are these?

6 A These are the Negotiating Committee Ground Rules.

7 Q Is this the document you just referred to as
8 being given to you at the first session?

9 A Yes, ma'am.

10 Q Did you agree to these ground rules?

11 A We did not agree with the ground rules. We
12 agreed that this was historically the ground rules you
13 would see in negotiations.

14 Q All right. Looking at this document, sir, was
15 there any discussion about any of the language in this
16 document?

17 A One of the things that comes to mind was all
18 caucuses should be limited to approximately 20 minutes.
19 That's based on each negotiation, each negotiation being
20 different from another. Some may take five minutes,
21 some may take 20, some may take 40. Whatever's required
22 in order to come to a proposal.

23 Q Did Sunbelt's negotiation team discuss that
24 particular ground rule with the union during that first
25 session?

1 A That I recall, yes, ma'am.

2 Q Any other ground rules that the Sunbelt team
3 discussed with the union?

4 A It was identified that we were not a sand and
5 gravel company, of which this ground rule stated that
6 Janesville Sand & Gravel and union locations of service.
7 That wasn't us.

8 Q Any other of these ground rules that was
9 discussed?

10 A Yeah, we went through several, several. One of
11 them that was mentioned was the parties shall decide all
12 language proposals before discussing wages.

13 Q And what did you understand that to mean?

14 A That economics would be at the final stages, if
15 you will, of a negotiation. Everything prior would be
16 worked out at that time.

17 Q And you testified back in December that you had
18 been involved in negotiation sessions at other locations
19 in your region.

20 For those negotiations, had the union ever
21 presented Negotiating Committee Ground Rules or
22 something similar to this?

23 A No, ma'am.

24 Q Now, sir, if you would please look at General
25 Counsel Exhibit 6A. Look at the 6 tab. It says GCX,

1 and just look at the A.

2 A Okay.

3 Q Now, you stated that the union had a Collective
4 Bargaining Agreement that had been presented at the
5 first session. Was this it?

6 A From what I recall.

7 Q And it had the word draft across it?

8 A I do not recall a draft across it.

9 Q But something similar to this as you recall?

10 A Yes.

11 Q The Collective Bargaining Agreement that the
12 union presented, was it presented in advance of the
13 first negotiation session via e-mail or regular mail?

14 A No.

15 Q So it was presented at the first session in a
16 hard copy, correct?

17 MR. WIESE: Objection, leading.

18 JUDGE ROSAS: He's already answered.

19 MS. HILL: Thank you.

20 BY MS. HILL:

21 Q Do you recall what proposals Sunbelt provided to
22 the union for the first negotiation session?

23 A I do not.

24 Q Would it refresh your recollection if you looked
25 at your notes from the first negotiation session?

1 A Yes.

2 Q All right. If you would do so, sir.

3 A Okay.

4 Q Reviewing your notes, did that help to refresh
5 your recollection as to what proposals Sunbelt had given
6 to the union?

7 A Yes.

8 Q And without looking at your notes, sir, what
9 proposals were those, sir?

10 A We discussed the review of GPS and the use of
11 jamming devices, and that it had been known that
12 vehicles with GPS, from time to time the drivers have
13 found to be using the jamming devices and how that's --
14 it's illegal, and we wanted to ensure that it made its
15 way into the CBA.

16 Q So was that the explanation given to the union
17 for having that proposal?

18 A Yes, ma'am.

19 Q Any other proposals?

20 A We talked about dues and how the dues would be
21 paid directly to Sunbelt or would they need to be paid
22 to the Local 139.

23 Q And do you recall what Sunbelt's proposal was for
24 that?

25 A We asked that they be paid directly to the 139.

1 Q Did Sunbelt's negotiation team explain why they
2 wanted that proposal?

3 A Yeah, because of the cost, the variable cost
4 attached with it for the company to process the dues and
5 then turn around and write a check to the Local 139.

6 Q For that first negotiation session, where did
7 Sunbelt caucus?

8 A At the Franksville PC, profit center.

9 Q Did Sunbelt ask the union any questions regarding
10 their proposal?

11 A Why they hadn't been submitted in advance of.

12 Q And did anyone on the union's negotiating team
13 explain why?

14 A The reasoning was they don't negotiate via
15 e-mail.

16 Q Were they asked why it couldn't have been mailed?

17 A I do recall, but I don't remember what the
18 response was.

19 Q What was the result of the union not providing
20 the draft CBA ahead of time?

21 A I don't recall.

22 Q What was the result of the union requiring
23 written proposals from Sunbelt?

24 A So that it was documented.

25 Q And was Sunbelt required to provide written

1 proposals for all of the negotiation sessions?

2 A Not all. Some were arrived through verbal
3 agreements/TAs.

4 Q Now, did you attend the second session of
5 negotiating with the union?

6 A I did.

7 Q Do you recall when that was?

8 A It was in June.

9 Q And do you recall what was discussed at that
10 time, sir?

11 A I don't recall the specifics.

12 Q Would any document refresh your recollection as
13 to what was discussed, sir?

14 A Yes.

15 Q And what would that be?

16 A My negotiation notes.

17 Q Okay. Would you please review those, sir.

18 A Okay.

19 Q And do those notes refresh your recollection,
20 sir, as to what was discussed in that second negotiation
21 session?

22 A Yes. There was a lot discussed, so specific to
23 each one, probably not.

24 Q All right. Can you generally -- so when you say
25 "a lot," how many -- do you have an idea of how many

1 proposals?

2 A On average, we would touch on 22 to 30 different
3 negotiables in any given meeting.

4 Q And for the second negotiation session, were
5 Sunbelt's proposals given to the union in writing, sir?

6 A Yes.

7 Q You heard the discussion regarding Sunbelt's
8 employee handbook being given to the union. Is that
9 something that you, as part of the negotiation team for
10 other Sunbelt negotiations sessions with other unions,
11 is that something that you do, too, to give the union --

12 A Provide a handbook?

13 Q Yes.

14 A Yes, ma'am.

15 Q And why?

16 A It establishes what our rules and policies and
17 procedures are in regards to the management of the
18 employees so that we have kind of a baseline to work
19 from.

20 Q During the second session, was discipline
21 discussed?

22 A Yes.

23 Q And what was discussed about that?

24 A Well, one of them was how do you deal with if you
25 have an altercation in the PC between a BA and an

1 employee and what our experience has been in the past by
2 having those engagements in the location.

3 Q And what else was said, if anything, regarding
4 those interactions between employees and the union
5 regarding dues?

6 A Well, we've had physical altercations, so we've
7 asked that those conversations be taken off-site.

8 Q Oh, is Sunbelt a contractor?

9 A No, ma'am.

10 Q How would you define contractor?

11 A Someone whose labor is hired directly to perform
12 a job or a task.

13 Q And how would you describe Sunbelt?

14 A As a service provider.

15 Q Did you ever have to define those, you know,
16 contractor and what Sunbelt did to the union?

17 A We did.

18 Q Do you recall when?

19 A If I recall, it was the second or fourth meeting,
20 and it was built -- one of the negotiables was built
21 around hours worked. So if we were open six out of
22 seven days, a lot of times on Saturdays, depending on
23 how someone was scheduled, that would be on regular time
24 for a Saturday. Historically for a contractor, all
25 Saturdays can be overtime.

1 Q If you would please look at General Counsel
2 Exhibit 7A, sir. Do you recognize this document, sir,
3 this exhibit? Excuse me.

4 A Yeah. A CBA.

5 Q Any of the handwriting on this yours, sir?

6 A No.

7 Q Looking at Page 3 of 4 of this exhibit, sir, do
8 you see a notation of 7/16/18?

9 A Can you repeat that?

10 Q All right. Look at Page 3 of 4. Those numbers
11 will appear in the lower right-hand corner of 7A.

12 A Okay.

13 Q All right. And about a third of the way from the
14 bottom, do you see a date and some handwriting there?
15 This is 7A.

16 A On Page 3, I see Management Rights at the top.
17 Is that the one?

18 MS. HILL: Okay. Your Honor, may I approach?

19 JUDGE ROSAS: Yes.

20 MS. HILL: Thank you. Okay, I'll try to remember
21 theirs is blue.

22 THE WITNESS: Okay.

23 BY MS. HILL:

24 Q Looking at these pages, any of the handwriting on
25 these pages yours, sir?

1 A No, ma'am.

2 Q Looking at 3 of 4.

3 A Okay.

4 Q Do you see the date 7/16/18?

5 A I do.

6 Q Pat Ryan ok with?

7 A Yes.

8 Q That name, Pat Ryan, is that a familiar name to
9 you?

10 A I never heard of him or her.

11 Q Did the union at any time have to discuss any of
12 Sunbelt's proposals away from the -- after a negotiation
13 session?

14 A Yes.

15 Q And what was the reason for that?

16 A They asked they check with their counsel.

17 Q And as a result of the union having to wait to
18 talk to counsel about proposals, did that speed up or
19 slow down negotiations?

20 MR. WIESE: Objection, leading.

21 JUDGE ROSAS: Rephrase.

22 BY MS. HILL:

23 Q Okay. As a result of the union having to confer
24 with their attorney on proposals presented by Sunbelt,
25 how did that impact the negotiations?

1 A It would have hindered or slowed down the
2 process.

3 Q With respect to the GPS, was that proposal agreed
4 to by both parties?

5 A Yes.

6 Q At that June negotiation session, were any
7 proposals TA'd?

8 A Yes.

9 Q Do you recall how many, sir?

10 A No.

11 Q But more than one would you say?

12 A Yes.

13 Q Do you recall when the next negotiation session
14 was?

15 A July.

16 Q And did you attend that?

17 A Yes.

18 Q Do you recall what was discussed during that
19 negotiation session, sir?

20 A I do not.

21 Q Would your negotiation notes refresh your
22 recollection regarding the session?

23 A Yes, ma'am.

24 Q If you would please review those.

25 A The black binder, right?

1 Q Yes.

2 A I don't have that one in here.

3 Q Okay. It's not in there?

4 A No.

5 Q All right. What was the next date for a
6 negotiation session in 2018?

7 A August.

8 Q Okay. And do you recall what was discussed
9 during that negotiation session?

10 A I do not recall the specifics.

11 Q All right. Would your negotiation notes refresh
12 your recollection, sir?

13 A Yes.

14 Q Then please do so, and then when you're finished,
15 look up, and then I'll ask questions.

16 A Okay.

17 Q And did you have enough time to refresh your
18 recollection regarding the August negotiation session,
19 sir?

20 A Yes.

21 Q How was that negotiation session started? What
22 was discussed?

23 A Terry McGowan was in attendance.

24 Q For all of the negotiation sessions, how did they
25 start?

1 A With a safety moment.

2 Q And what is a safety moment?

3 A Identifying an at-risk opportunity and finding
4 ways to use that or leverage that conversation to
5 prevent future incidents.

6 Q Whose idea was it to have a safety moment?

7 A Sunbelt's.

8 Q And why is that?

9 A It's a requirement that we had across the
10 organization so as to bring awareness in each and every
11 session we have, whether it's a negotiation session or
12 whether it's three or more attendees in any given
13 meeting across the organization.

14 Q At any of the negotiation sessions that you
15 attended with 139, did any member of the union
16 negotiating team object to the safety moment?

17 A No.

18 Q Did any of the negotiation team from the union
19 ever tell you that the safety moment was a waste of
20 time?

21 A No. There was usually 50/50 participation and
22 what could be made better using that incident and that
23 description.

24 Q And based on your review of your notes to refresh
25 your recollection, what was discussed during the August

1 negotiation session?

2 A We discussed the bulletin board, where the
3 bulletin board would have to be placed, conceptually
4 what would be placed on the board. Besides the board,
5 we had follow-up discussions on GPS, tools, the
6 description of the tools that would be in the article
7 itself, and the level of detail of which those tools
8 would be provided, and then days of pay if I recall.

9 Q When you say "days of pay," are you referring to
10 when the payday would occur or something else?

11 A Whether it would be a weekly or biweekly payout.

12 Q Anything else that you recall from that session?

13 A Just cause and determining when a -- a
14 determination would be a just cause and what agreements
15 were reached.

16 Q Were the proposals that were discussed during the
17 sessions up to this date and including August, were
18 those the same type of provisions that you negotiated at
19 any other location with the union in your region?

20 A Very similar provisions in nature while each
21 one's its own, all right. When you're collecting --
22 when you're negotiating a CBA, it's a living document,
23 so each negotiable article or provision would be
24 discussed within itself.

25 Q For your region, do you have Collective

1 Bargaining Agreements at union locations by profit
2 center or some other means?

3 A Profit center.

4 Q And for the Local 150, is that contract per
5 profit center?

6 A That one's done at a district wide.

7 Q And why is that?

8 A That's what the agreement was when it was
9 initially signed several years ago.

10 Q Before you became the VP for the region?

11 A Pre several VPs.

12 Q All right. The next negotiation -- oh, excuse
13 me. For August, were any provisions tentatively agreed
14 to?

15 A Yes, ma'am.

16 Q Do you recall approximately how many?

17 A I don't.

18 Q But your notes would truthfully reflect which
19 proposals had been TA'd?

20 A Yes, ma'am.

21 Q Thank you. Do you recall when the next
22 negotiation session was?

23 A I don't.

24 Q If you would please look at your notes and see
25 when was the next negotiation session that you attended?

1 A In October.

2 Q Was there a negotiation session between the
3 August session that you attended and the October
4 session?

5 A Yes.

6 Q And when was that?

7 A In September.

8 Q And did you attend that?

9 A I did not.

10 Q And why not, sir?

11 A I had another engagement.

12 Q And do you recall what it was?

13 A I don't.

14 Q Who had authority for that September negotiation
15 session to agree to any proposals that were negotiated?

16 A I had given the authority to Bo Bogardus, the
17 district manager.

18 Q Do your notes reflect every single proposal that
19 was made during these negotiation sessions?

20 A Several, not all.

21 Q And it doesn't -- do your notes reflect what each
22 person on each negotiation team stated?

23 A No.

24 Q For October, do you recall what topics were
25 discussed?

1 A I do not.

2 Q Okay. What would reflect your recollection --
3 refresh your recollection?

4 A If I could look at the notes.

5 Q Okay, go ahead, look at the notes. When you're
6 finished, please look up.

7 Did that refresh your recollection about what was
8 discussed during the October negotiation sessions?

9 A Yes, ma'am.

10 Q And what was discussed?

11 A The drug policy or drug amendment and then
12 several articles in between.

13 Q Sir, if you would please look at the blue binder
14 now, please, and look at General Counsel's Exhibit 6C.

15 A Okay.

16 Q All right. In 6C, do you see numbers in the
17 lower right-hand corner, Pages 1 through 4 -- or 1 of 4?
18 Excuse me.

19 A So I see Exhibit A and G.

20 Q Okay. Do you see --

21 A Exhibit 6A and G.

22 Q Do you see 6C?

23 A Maybe I'm missing something. I don't see it.

24 MS. HILL: Okay. Your Honor -- Mr. Wiese, I
25 believe that that one was admitted, or am I wrong, 6C?

1 MR. WIESE: Yes, it should be in there.

2 MS. HILL: It was.

3 BY MS. HILL:

4 Q It's not in the binder, sir?

5 A No, ma'am.

6 MS. HILL: Your Honor, do you mind if I give him
7 6C? Is that all right?

8 JUDGE ROSAS: Uh-huh.

9 MS. HILL: All right. Here we go. May I
10 approach?

11 JUDGE ROSAS: Yes.

12 THE WITNESS: Okay.

13 BY MS. HILL:

14 Q All right. Mr. Mayfield, is any of the
15 handwriting on that exhibit yours, sir? I think on the
16 first page in the upper -- like the middle there's some
17 handwriting. Is any of that yours?

18 A No, ma'am.

19 Q Do you recall if those -- if 6C reflects what was
20 discussed during the October 23rd negotiation session?

21 A I would have to defer back to my notes.

22 MS. HILL: Your Honor, may he?

23 JUDGE ROSAS: (Nods head.)

24 MS. HILL: Yes, okay.

25 THE WITNESS: Yes.

1 BY MS. HILL:

2 Q And the paid time off policy, was that something
3 that had been given to the union?

4 A Yes.

5 Q And at some point during the negotiation
6 sessions, was that policy approved?

7 A Yes.

8 Q Did the union make any changes to that proposal
9 from Sunbelt?

10 A Yes.

11 Q And do you recall what changes were made?

12 A I do not.

13 Q But Sunbelt agreed to some of the union's
14 revisions to that proposal, sir?

15 A I don't recall.

16 MS. HILL: All right. Now, if it's all right,
17 your Honor, may I approach to retrieve my copy?

18 JUDGE ROSAS: (Nods head.)

19 MS. HILL: Thank you.

20 BY MS. HILL:

21 Q Do you recall when the next negotiation session
22 was held, sir?

23 A November -- December.

24 Q All right. What would refresh your recollection,
25 sir, as to when the negotiations were held?

1 A My notes.

2 Q If you would please look at your notes, sir. And
3 when you're finished reviewing them, then please look
4 up.

5 A Okay.

6 Q All right. And did reviewing your notes refresh
7 your recollection as to what was discussed during the
8 negotiations?

9 A Yes.

10 Q And what was discussed by the parties during that
11 December session?

12 A Their health program, their pension program, boot
13 policy.

14 Q And did Sunbelt have to prepare any written
15 proposals during that session?

16 A Yes.

17 Q And do you recall how many?

18 A I do not.

19 Q Do you recall how long it took to prepare those
20 negotiations -- those proposals?

21 A More than 20 minutes.

22 Q And was the union available when Sunbelt was
23 finished preparing those negotiation proposals?

24 A Not that I recall.

25 Q And why not?

1 A I don't recall.

2 Q Were any negotiations held in -- oh, excuse me.
3 For December, did the union request anything from
4 Sunbelt during that session?

5 A I don't recall.

6 Q When was the next negotiation session?

7 A February.

8 Q And who attended it?

9 A Terry, Michael Ervin, Dan, Greg and Steve.

10 Q And do you recall anything that Dan said during
11 that negotiation session?

12 A I do not.

13 Q Would anything refresh your recollection
14 regarding what he might have said?

15 A Yes.

16 Q All right. What is it?

17 A Notes.

18 Q Would you please review your notes from February
19 of 2019, sir.

20 A Okay.

21 Q All right. First of all, when did the
22 negotiations start that day?

23 A 9:00 a.m.

24 Q Did they -- at any time did negotiations start
25 later than 9:00 a.m., any of the sessions?

1 A I don't recall.

2 Q Did you ever arrive late for any of the
3 negotiations?

4 A Yes.

5 Q And do you recall when that happened?

6 A Yeah, one of them was -- I was 11 minutes late.

7 Q And why were you 11 minutes late, sir?

8 A Traffic, road construction.

9 Q Did the union say anything about your lateness?

10 A Yes.

11 Q And what was said and by whom?

12 A By Dan. Dan had made the statement that I need
13 to leave earlier, and I asked Dan, I said well, how
14 early is early, is it four hours, five hours, and Dan
15 just said that you need to leave earlier.

16 Q Did the negotiations continue after that?

17 A Yes, ma'am.

18 Q Did you apologize for being 11 minutes late?

19 A I did.

20 Q And what did the union propose during this
21 February negotiation session?

22 A I don't recall.

23 Q Were any economics discussed during the February
24 negotiation session?

25 A Yes.

1 Q And what economics?

2 A 401k, retirement/pension, health, the fringe
3 benefits.

4 Q And what was Sunbelt's response to that?

5 A That we had yet to TA all of the language prior
6 to moving into economics.

7 Q All right. And so you said that Mr. McGowan
8 attended one of the sessions in February, correct?

9 A Yes.

10 Q How many negotiation sessions were there in
11 February of 2019, I'm sorry?

12 A Two.

13 Q Okay. And how would you describe Mr. McGowan's
14 participation in the session that he attended in
15 February?

16 A It slowed down the productivity of the meeting.

17 Q And why do you say that, sir?

18 A A lot of times it was general discussion points
19 for the first 45 minutes of Terry being at the meeting,
20 and then after the initial 45 minutes, we'd get into the
21 provisions and negotiations.

22 Q Do you recall anything specific that Mr. McGowan
23 stated during that February session he had attended?

24 A Yeah. That he could assist with the Foxconn
25 project and having us be represented on Foxconn if we

1 were the -- his union conciliary [sic].

2 Q And what, if anything, was Sunbelt's response to
3 that?

4 A We weren't interested.

5 Q And why weren't you interested?

6 A Foxconn was never a project that we sought out or
7 identified as a job we intended to support. If we were
8 going to support it, we were going to do it peripherally
9 versus intimately.

10 Q And do your notes properly reflect all the
11 proposals that were tentatively agreed to in February?

12 A No.

13 Q They're not accurate?

14 A They're accurate, but not all the negotiables and
15 provisions that we discussed.

16 Q Okay. But the ones that were TA'd you reflected
17 in your notes?

18 A I don't recall.

19 Q When was the next session?

20 A I don't recall the date. I'd have to look in my
21 notes.

22 Q Please look at your notes and refresh your
23 recollection, sir.

24 A February 21st.

25 Q Okay. So that was the second session --

1 A Yes.

2 Q -- for February? And do you recall how long
3 that session lasted?

4 A I'd have to look at my --

5 Q Okay.

6 A Well past 2:00 o'clock.

7 Q And were proposals -- articles of the Collective
8 Bargaining Agreement, were they TA'd?

9 A Yes.

10 Q After the February 21st, 2019 negotiation
11 session, when was the next one, if you recall?

12 A March.

13 Q And did you take notes from that session, sir?

14 A Yes.

15 Q And was there a safety moment for that session?

16 A Yes.

17 Q Do you recall what was discussed?

18 A A recent incident we had at Sunbelt Rental with a
19 passing of one of our teammates or colleagues.

20 Q Did anyone object to that safety moment, sir?

21 A No, ma'am.

22 Q And for that session, were any provisions
23 tentatively agreed to by the parties?

24 A Yes.

25 Q How would you describe the amount of work done by

1 the parties on that particular day in March 2019?

2 A Can I reflect in my notes?

3 Q Yes, sir.

4 A We covered a lot of ground.

5 Q Any proposals that you recall that were
6 significant for the agreement?

7 A A myriad of them. Three pages of notes.

8 Q Okay. And do you believe that your notes
9 accurately reflect the provisions that were TA'd on that
10 day?

11 A Several of them, yes.

12 Q When was the next session?

13 A April.

14 Q And you attended that session?

15 A Yes.

16 Q And did you take notes from that negotiation
17 session?

18 A Yes.

19 Q Do you recall what proposals were discussed
20 during that session?

21 A I do not recall.

22 Q Would your notes refresh your recollection, sir?

23 A Yes.

24 Q Please review them.

25 A Okay.

1 Q Sir, did your notes refresh your recollection as
2 to what proposals were discussed?

3 A Yes, ma'am.

4 Q And what proposals were discussed?

5 A Hours for overtime, whether it was hours in a
6 day, hours in a week, as well as dues, central pension,
7 health insurance.

8 Q So some economics were discussed during this
9 session, correct?

10 A Yes, ma'am.

11 Q Did Sunbelt explain why -- well, first of all,
12 what was Sunbelt's proposal regarding a retirement plan?

13 A A proposal they would use the 401k.

14 Q And why did Sunbelt -- did Sunbelt explain to the
15 union why it was making the proposal regarding the 401k?

16 A Yes.

17 Q And what was its explanation?

18 A Because the 401k is within the employee's control
19 to manage, while the pension is out of their control and
20 there's always a risk of funding, of not being funded.

21 Q Was there ever a time when the union provided
22 Sunbelt with a proposal that had errors in it?

23 A Yes.

24 Q Could you explain that, sir.

25 A Well, there was times that we had already TA'd

1 provisions and articles. At one point they provided
2 us -- they provided us a set of documents that had what
3 they had said needed to be TA'd still, and in reviewing
4 the document, we had found they already TA'd them in
5 prior sessions.

6 Q And how was that relayed to the union that there
7 were errors in their proposal?

8 A Well, we had reviewed it during our caucus and
9 then walked over to them, explained to them that several
10 of these, when we went back through our notes and
11 reviewed them, had already been TA'd.

12 Q Do you recall the time frame for the entire
13 negotiation session for April 30th of 2019?

14 A I do not.

15 Q When was the next session?

16 A May.

17 Q Do you want to look at your notes to see?

18 A Sorry. June.

19 Q Around during the June negotiation session, who
20 from Sunbelt was there?

21 A Bryan Anderson, Bo Bogardus, myself, counsel.

22 Q What proposals were discussed during that
23 session?

24 A Health, pension, as well as several others.

25 Q What did the -- what proposal did the union

1 present to Sunbelt for that session?

2 A I don't recall.

3 Q Would your notes refresh your recollection?

4 A Yes.

5 Q Okay. If you would please review.

6 A We discussed the next negotiation dates, wages.

7 Towards the end of the meeting, Mr. Ervin was going to

8 send over a series of TA agreements for us to review.

9 Q All right. Would you please now look in the blue
10 binder for General Counsel Exhibit No. 12, sir.

11 A Okay.

12 Q All right. Now, the first page is blank, sir. I
13 would like you -- I'd direct your attention to the
14 second page of this.

15 A I only have one page.

16 Q Oh, okay. All right. Does your page have a
17 table of contents?

18 A Yes.

19 Q Okay. Do you recall seeing this document prior
20 to today, sir?

21 A Yes.

22 Q And what is this document?

23 A The table of contents of the various articles.

24 Q And there seems to be a date at the bottom,

25 6/5/19. Do you see that, sir?

1 A Yes.

2 Q Do you recall seeing this on June 5th, 2019?

3 A Yes.

4 Q And how did it come about that you saw this
5 document on June 5th, 2019?

6 A It was submitted to us at the time in the
7 meeting.

8 Q Who submitted it?

9 A I do not recall.

10 Q Do you have any handwriting on this document,
11 sir?

12 A I do.

13 Q Please identify it.

14 A Lower left-hand corner.

15 Q Okay. And what handwriting is yours?

16 A It's just to the right of where it says 6/5/19,
17 and just above the line that -- where it says Sun Belt,
18 where it's broken up.

19 Q Is that the correct spelling for Sunbelt?

20 A No, ma'am.

21 Q Do you know who wrote that?

22 A Steve Buffalo.

23 Q And the handwriting below that, do you recognize
24 that?

25 A I do not.

1 Q Is that the correct spelling for Sunbelt?

2 A Yes.

3 Q And do you recall why Steve Buffalo was involved
4 in this document, sir?

5 A I do not.

6 Q Okay. Do you recall at any time -- all right.
7 I'll direct your attention to the top of this page, this
8 exhibit, and you see it says Pat Hill issued 2-24 and
9 then 6-5-19?

10 A Yes.

11 Q Do you recall having an issue with respect to
12 this particular exhibit, sir, this proposal?

13 A Yes.

14 Q And what was the issue?

15 A The sorting of the articles.

16 Q Explain the sorting of the articles, sir.

17 A They weren't aligned with what had been TA'd and
18 understood as our articles through negotiations.

19 Q All right. So what did Sunbelt tell the union as
20 a result of that?

21 A That it would need to be framed up and structured
22 the way it was agreed to.

23 Q Did this table of contents have additional pages
24 with it or was this a stand-alone document?

25 A There was other pages with it.

1 Q And what were those pages?

2 A The TA provisions broken out with every article
3 on its own separate page.

4 Q Okay. And did anyone from Sunbelt's negotiation
5 team review the language in there?

6 A Yes.

7 Q And what was determined, if anything?

8 A That several of the articles that were being
9 asked for us to TA had already been TA'd through prior
10 sessions.

11 Q Anything else about the wording in it?

12 A I don't recall.

13 Q All right. When was the next negotiation
14 session?

15 A July.

16 Q And did you attend that one, sir?

17 A Yes.

18 Q Did you participate in the negotiation session
19 itself?

20 A Towards the second half of that meeting.

21 Q All right. Would you please look at your
22 negotiation notes to refresh your recollection about
23 that session, sir.

24 A Yes.

25 Q And what page did you find your notes for the

1 July negotiation session?

2 A July 9th.

3 Q And the document number on the bottom, if you
4 could read that into the record.

5 A Sunbelt-01534.

6 Q Did you arrive on time for the start of the
7 negotiation session?

8 A No, ma'am.

9 Q And what happened once you did arrive?

10 A The meeting had been adjourned because of the
11 emotions that flared, so it was stated that a break
12 needed to be taken. That's what happened.

13 Q Did you have any conversations with anyone from
14 the union's negotiation team?

15 A After?

16 Q (Nods head.)

17 A Yes.

18 Q With whom?

19 A Steve Buffalo.

20 Q And where did that discussion occur?

21 A In the conference room at the Franksville
22 location.

23 Q And what did you discuss with Mr. Buffalo?

24 A The unprofessionalism that took place during that
25 meeting, and that Steve suggested that maybe we

1 establish another day, and we all agreed another day
2 would be the right thing to do with the flaring of the
3 emotions that were taking place.

4 Q Did you agree when the next negotiation session
5 would be?

6 A We did.

7 Q And when would the next negotiation session be?

8 A I'd have to reflect in my notes.

9 Q All right. If you would please do so, sir.

10 A August.

11 Q Thank you, sir. Up until this negotiation
12 session, July 9th, 2019, had either the union or Sunbelt
13 stated that the parties had reached an impasse?

14 A No, ma'am.

15 Q To the best of your knowledge, did the union at
16 any time inform you that it had contacted Federal
17 Mediation and Conciliation Service for assistance with
18 the negotiations?

19 A No.

20 MS. HILL: Your Honor, we've been going at this
21 for quite some time. Could we take a break, please?

22 JUDGE ROSAS: Sure. We'll take five.

23 MS. HILL: Thank you.

24 (Recess.)

25 JUDGE ROSAS: Okay. Back on the record.

1 MS. HILL: Thank you, your Honor.

2 BY MS. HILL:

3 Q August 8th, 2019, sir --

4 A Yes.

5 Q -- what was that negotiation session used for, if
6 you recall?

7 A For the announcement of the reorganization of the
8 location.

9 Q For the location meaning Franksville?

10 A Yes, ma'am.

11 Q All right. Would you please look at the blue
12 binder, General Counsel Exhibit No. 17, sir.

13 A Okay.

14 Q Is that your signature on this letter, sir?

15 A Yes.

16 Q How was this letter sent to the union, sir?

17 A Via e-mail.

18 Q Explain how the process of the negotiation
19 session on August 8th, 2019, how -- who started it?

20 A Well, we started off with a safety moment at
21 which point -- I don't recall specifically. Mario
22 Rivera was mentioned as far as a safety -- used as a
23 safety moment.

24 Q All right. Did at any time on August 8th, did
25 the 139 ask to negotiate reorganization?

1 MR. WIESE: Objection, your Honor. The witness
2 appears to be reading off of his notes while he's
3 testifying.

4 JUDGE ROSAS: Repeat the question.

5 BY MS. HILL:

6 Q Okay. At any time did anyone from Local 139
7 during the August 8th negotiation session ask to
8 negotiate the reorganization itself?

9 A Can you repeat the question.

10 Q During the August 8th, 2019 negotiation
11 session -- and you said that was regarding the
12 reorganization?

13 A Yes, ma'am.

14 Q Did anyone from the Local 139 ask to negotiate
15 the reorganization itself?

16 A No.

17 Q What was discussed by Sunbelt during the August
18 8th, 2019 negotiation session?

19 A Establishing the next meeting that would take
20 place.

21 Q Did anyone from Sunbelt discuss what the
22 reorganization was about?

23 A Yes.

24 Q And who discussed that?

25 A We all discussed it, Local 139 and Sunbelt.

1 Q All right. Who from Sunbelt discussed it?

2 A I did.

3 Q What did you tell the union about the
4 reorganization during this session?

5 A That we'd be transitioning the location from a
6 heavy, small equipment or general tool-type rental house
7 to a small equipment, will call-type operation.

8 Q Did Sunbelt ask the union at any time during this
9 session if they wanted to negotiate the reorganization?

10 A We had asked if they had questions multiple
11 times.

12 Q And did the union ask any questions about the
13 reorganization?

14 A No.

15 Q During the session, did the union ask how quickly
16 big equipment was going to be moved out of the
17 Franksville profit center?

18 A Not that I recall.

19 Q During the August 8th negotiation session, did
20 the union ask how the small equipment was going to be
21 maintained?

22 A It was just described to be similar to like a
23 Home Depot-type model where anything that required a
24 gross vehicle weight rating of 10,000 pounds or less
25 would be used for deliveries and the check-ins would be

1 done by counter personnel for small equipment that was
2 returned.

3 Q Did the union ask how would the preventive
4 maintenance be handled for the small equipment at that
5 location?

6 A Not that I recall.

7 Q Did the union ask how the small equipment at that
8 location would be cleaned?

9 A Not that I recall.

10 Q Did any of the TA provisions that the parties had
11 developed through all the negotiations before August
12 8th, did any of those sessions discuss how equipment
13 could be moved out of the profit center in Franksville?

14 A Yes.

15 Q Explain that.

16 A Well, it was identified that from time to time an
17 ERS would be utilized or any personnel at the PC would
18 be utilized, outside of a technician or driver or the
19 collective bargaining group, that an ERS or inside sales
20 representative would be the one checking in equipment.

21 Q Could you explain what an ERS is.

22 A Yeah. Equipment rental specialist.

23 Q And did the parties discuss what type of
24 equipment an ERS could deliver or pick up or move?

25 A Yeah. Within the requirements of their license,

1 so 10,000 pounds or less for an ERS or a sales
2 representative, even management.

3 Q When you say a "sales representative," what are
4 you referring to, what position?

5 A An outside sales rep.

6 Q And how many ERS's did the Franksville location
7 have as of August 8th?

8 A I don't recall.

9 Q Do you recall a Gary Stamm?

10 A Yes.

11 Q And who was he?

12 A Gary was a driver for us at one point in time in
13 part of the collective bargaining group, and then Gary,
14 when we had an opening, applied for an ERS position for
15 the operations side of the business.

16 Q And he eventually did get that position?

17 A Yes.

18 Q Do you recall when he was moved into that
19 position?

20 A I do not recall.

21 Q Prior to August 8th of 2019, did OSRs actually
22 move equipment that was less than 10,000 pounds?

23 A Yes.

24 Q Prior to August 8th, 2019, did any of the ERS's
25 move equipment less than 10,000 pounds?

1 A Yes.

2 Q And during -- and that occurred during the time
3 that the contract was being negotiated with the 139?

4 A Yes.

5 Q At any negotiation session, did the union
6 complain about either the ERS's or the outside sales
7 representatives moving equipment that was less than
8 10,000 pounds?

9 A No.

10 Q During the session on August 8th of 2019, did you
11 describe the kind of equipment that would be kept, you
12 know, the size of the equipment that would be kept at
13 the Franksville profit center?

14 A Yes.

15 Q And what did you -- how did you describe it to
16 the union?

17 A It was a myriad of different types of equipment.
18 Anything that can be hauled on a gross vehicle weight
19 rating of less than 10,000 pounds. It could have been a
20 skid-steer, it could have been a roller, it could have
21 been a tiller. It went through various descriptions.

22 Q Did the union -- any of the members of the union
23 negotiation team ask any questions about that?

24 A No.

25 Q Who made the decision to reorganize the

1 Franksville profit center?

2 A I did.

3 Q Did you receive input from Mr. Bogardus to make
4 that decision?

5 A No.

6 Q Did you receive input from Mr. Bryan Anderson?

7 A No.

8 Q Why did you -- when did you make the decision to
9 reorganize the Franksville profit center?

10 A August 5th.

11 Q 2019?

12 A Yes, ma'am.

13 Q Did the decision to reorganize that profit center
14 have anything to do with unfair labor practice charges
15 filed by the union?

16 A No.

17 Q What was it based on?

18 A At that point we had been down -- we were down 30
19 percent from prior years' earnings, and it continued to
20 decline at a precipitous fall, and it didn't look like
21 the -- the trends were all indicating it wasn't going to
22 get any better or improve from the state it was at.

23 July historically had always been a jumping-off
24 point for strong revenue growth and equipment on rent or
25 utilization. That July, there was no indicators that it

1 was going to improve from the state it was at.

2 Q Well, what was causing this decline in revenue
3 and profitability?

4 A The Local 139's influence through bannerling and
5 demonstrations on the market to not use Sunbelt.

6 Q Had Sunbelt ever done this kind of -- set up this
7 kind of a profit center before?

8 A We've had other examples of that within Sunbelt.
9 And one of our biggest competitors runs that model
10 consistently throughout a thousand plus locations.

11 Q And which location is that -- or which company is
12 that? Excuse me.

13 A United Rentals.

14 Q Had you ever worked at United Rentals?

15 A I did.

16 Q And you were familiar with that?

17 A Yes. I ran an area at one point of United
18 Rentals.

19 Q During this August 8th negotiation session, did
20 you tell the union where the big equipment, bigger than
21 the 10,000 pounds, where it was going to be going?

22 A Not that I recall.

23 Q Did the union ask where would the equipment
24 greater than 10,000 pounds go?

25 A No.

1 Q If you would please look at the blue binder, sir.
2 Oh, I'm sorry, black binder, black binder. Sorry. And
3 look at Exhibit 6, sir.

4 A Okay.

5 Q All right. Do you recognize this document, sir?

6 A Yes.

7 Q And what does this -- what is this document, sir?

8 A It's what we refer to as an ROI template.

9 Q What does ROI stand for?

10 A Return on investment.

11 Q All right. And what does this particular ROI
12 refer to?

13 A To the serialized assets that are owned.

14 Q Owned by what?

15 A By the profit center.

16 Q Which profit center?

17 A Franksville, PC 776.

18 Q And it indicates in about the fourth column "From
19 Loc." Does that mean from location?

20 A Yes.

21 Q Okay. And that's all of the Franksville
22 location. And it says the "To Territory." And that
23 column indicates what?

24 A That would indicate who has in their possession
25 at that time.

1 Q Now, if you look about the middle of the page, it
2 indicates another column, "To District name, To Loc."

3 And "Loc" means what?

4 A Location.

5 Q And "Date transferred."

6 A Uh-huh.

7 Q So what does -- what do those two columns
8 indicate?

9 A The date that the unit was transferred.

10 Q From what to what?

11 A Well, this one shows a lot of August dates from
12 the originally owned -- the owning location to the new
13 location.

14 Q And the owning location was which profit center?

15 A Franksville.

16 Q And the new owning location is what?

17 A It's several different locations.

18 Q Are all of these in your region?

19 A Yes.

20 Q Are all of these locations in the State of
21 Wisconsin?

22 A Yes.

23 Q Now, to the right, that would be three columns
24 over from the "Date transferred," there's a
25 "Description."

1 A Uh-huh.

2 Q Is that the description of the piece of equipment
3 being transferred, sir?

4 A Yes.

5 Q Are those pieces of equipment listed there on the
6 first and second pages, are those pieces of equipment,
7 and it might take you a moment to go through them, are
8 those pieces of equipment over 10,000 pounds, or I
9 should say 10,000 pounds or greater, sir?

10 A Yes.

11 Q Do you see any pieces of equipment less than
12 10,000 pounds being transferred from the Franksville
13 location to another location in Wisconsin?

14 A Yeah. A saw cutter.

15 Q Just one saw cutter. And where did it go?

16 A PC 1006.

17 Q And that is?

18 A Fond du Lac.

19 Q Fond du Lac. And why was this equipment
20 transferred, sir?

21 A Because this location was no longer going to own
22 that business model. It was transitioning the type of
23 business it was going to do going forward.

24 Q And at any time during the negotiations on August
25 8th, did you tell the union when you thought all of the

1 equipment would be transferred to other -- the big
2 equipment would be transferred to other locations?

3 A I don't recall.

4 Q Did Sunbelt use outside haulers at the
5 Franksville location before the union election, if you
6 know?

7 A Yes.

8 Q And they did use them?

9 A Yes.

10 Q Did Sunbelt use outside haulers during the
11 negotiations with the 139?

12 A Yes.

13 Q Did the 139 ever complain to Sunbelt that outside
14 haulers were being used?

15 A No.

16 Q Do you currently have assigned to the Franksville
17 profit center any pieces of equipment that are 10,000
18 pounds or greater?

19 A Not that I recall.

20 Q What is a teardown?

21 A Referring to maintenance?

22 Q Yes, sir.

23 A So a teardown would be if you had to, you know,
24 dismantle a machine, the engine, the axles, that type of
25 repair.

1 Q For someone who is not a mechanic, I'm going to
2 put it in layman's terms. Would that be a really big
3 overhaul of a piece of equipment, sir?

4 A Yes.

5 Q All right. Did the Franksville location handle
6 those type of teardowns?

7 A Yes.

8 Q And did they ever source it out?

9 A Yes.

10 Q And how would you describe what would constitute
11 a reason for outsourcing a teardown?

12 A It was beyond our scope and ability in what we
13 were accustomed to doing, as well as availability of
14 manpower.

15 Q During your negotiation sessions with the 139,
16 did you intend to reach a collective bargaining
17 agreement with the union?

18 A Yes.

19 Q And did Sunbelt at any time during negotiations
20 negotiate wages?

21 A Yes.

22 Q And what was Sunbelt's proposal to the union?

23 A Wages would stay as is and then open at the end
24 of 12 months.

25 Q So a wage reopener --

1 A Yes.

2 Q -- after the first year?

3 A Yes.

4 Q And did you or someone on Sunbelt's team provide
5 an explanation for that proposal?

6 A I don't recall.

7 JUDGE ROSAS: Counsel, are you offering
8 Respondent's Exhibit 6?

9 MS. HILL: Yes, I was going to ask to have it
10 admitted.

11 MR. WIESE: No objection, your Honor.

12 MR. RYAN: No objection.

13 JUDGE ROSAS: Okay. Just a couple of questions.

14 MS. HILL: I do appreciate you reminding me, your
15 Honor.

16 JUDGE ROSAS: So facility 776 is in Region 9?

17 THE WITNESS: Yes, sir, your Honor.

18 JUDGE ROSAS: And over at the extreme right where
19 it refers to "Region," it refers to Region 920?

20 THE WITNESS: That's the cost center that
21 identifies Region 9.

22 JUDGE ROSAS: That's another facility within
23 Region 9?

24 THE WITNESS: No. That is the representation of
25 Region 9. It's just the cost center of the region.

1 JUDGE ROSAS: The code that's given to that?

2 THE WITNESS: That's right, yep.

3 JUDGE ROSAS: Okay. And these transfers of
4 equipment range chronologically from July 1st through
5 October 4th, 2019?

6 THE WITNESS: Yes, your Honor.

7 JUDGE ROSAS: Okay. All right. So Respondent 6
8 is received.

9 MS. HILL: Thank you, your Honor.

10 (Respondent's 6 was received.)

11 BY MS. HILL:

12 Q Sir, has Local 139 filed any election petitions
13 for any of the other General Tool profit centers in the
14 State of Wisconsin, sir?

15 A No.

16 Q Did the union ever suggest to Sunbelt's
17 negotiation team that the negotiations be held at a
18 location other than Sunbelt's profit center in
19 Franksville?

20 A They offered just prior to the first meeting, but
21 after that, no.

22 Q And what was Sunbelt's response?

23 A We felt the Franksville location was central and
24 the best place to hold a meeting.

25 Q Did the union ever ask to stop negotiations

1 early, earlier than had been scheduled by the parties?

2 A Yes.

3 Q Could you explain that, sir.

4 A Yeah. On one occasion they had an event that
5 they had to attend to. I don't recall the specifics.
6 It was either a funeral or some type of party they were
7 putting together for some of their members.

8 Q And where did Sunbelt caucus during negotiation
9 sessions?

10 A In the profit center manager's office.

11 Q And why there?

12 A It was available, and there was enough room to
13 house the four of us.

14 Q Other than the conference room where the two
15 parties met and the union negotiated, was there any
16 other room at the profit center where negotiations could
17 have been held?

18 A No.

19 Q Did the union ever claim during negotiation
20 sessions that Sunbelt was unprepared?

21 A Not that I recall.

22 Q Was the union ever unprepared for negotiations?

23 A Yes.

24 Q Could you explain how they were unprepared?

25 A Yeah. At one of the negotiation sessions, we had

1 ended the prior one with the agreement that the TA
2 provisions would be e-mailed over, and then when we had
3 that follow-up meeting, negotiation session, they were
4 supposed to be e-mailed, and they were never e-mailed,
5 and that caused a disruption to that meeting, and then
6 it was found out later that they were supposed to be
7 e-mailed, and they never were.

8 Q Are there any other examples of how the union was
9 not prepared?

10 A There were agreements that were TA'd that we were
11 being asked to review again, to be TA'd again.

12 Q And who asked Sunbelt to review them again?
13 Anyone in particular on the union's team?

14 A Well, Mike Ervin had handed us the documents to
15 be reviewed and TA'd, and that's when we had started
16 going through them in our caucus and found out that we
17 had TA'd several of them already.

18 Q Any other examples, sir, that you can recall?

19 A Not that I recall.

20 Q What other unions do you work with in your
21 region, sir?

22 A Five others.

23 Q And what are they?

24 A The Local 18, Local 324, Local 150, and 139. I
25 forget one.

1 Q Have you ever in the approximately two years that
2 you've been a regional vice president for Region 9, have
3 you ever had to negotiate a brand-new contract?

4 A Yes.

5 Q How many times?

6 A Twice.

7 Q Where?

8 A With the Local 18 and the Local 324.

9 Q For Local 18, where was that contract negotiated?

10 A That was Findlay, Ohio.

11 Q Do you recall how long it took to get a contract
12 at that location?

13 A That one was roughly 18 months.

14 Q With respect to 324, where was that contract?

15 A Kalamazoo, Michigan.

16 Q How long did it take to reach an agreement for
17 that location?

18 A Six months.

19 Q Other than for Local 139, sir, did you have any
20 other unfair labor practice charges filed within your
21 region?

22 A No.

23 Q For the Findlay location -- you mentioned that
24 every profit center's Collective Bargaining Agreement is
25 a little different. How would you compare Local 18's

1 contract for Findlay to the Kalamazoo contract?

2 A They're different.

3 Q Do you recall how they're different?

4 A There's a myriad of articles and provisions that
5 are different from one another. Everyone's negotiated
6 on its own.

7 Q With respect to benefits, were they identical for
8 both?

9 A No.

10 Q How did they differ?

11 A Sunbelt benefits versus a local benefits.

12 Q So which of these profit centers has Sunbelt's
13 benefits in the Collective Bargaining Agreement?

14 A Findlay.

15 Q And Kalamazoo has the 324's in it?

16 A Yes.

17 Q How many contracts do you have with the 324?

18 A Six.

19 Q And have you -- in those other five contracts,
20 you're including Kalamazoo in it?

21 A Yes.

22 Q The other five contracts, are those all renewals?

23 A Kalamazoo was not. The others are renewals.

24 Q For those other profit centers, are all of them
25 on 324's benefits?

1 MR. WIESE: Objection, your Honor, relevance.

2 JUDGE ROSAS: Sustained.

3 BY MS. HILL:

4 Q With respect to the 150, that is a single
5 contract for many locations, sir?

6 A Yes.

7 Q And that one, did you have to negotiate the
8 renewal on that one?

9 A Yes.

10 Q You've mentioned briefly that there was an issue
11 with the -- I think you used the term climate control in
12 the conference room at the Franksville location.

13 Who brought it to the attention of you that there
14 was an issue with the temperature there?

15 A I don't recall.

16 Q Was it too hot or too cold, or what was the
17 issue?

18 A I remember it being cold.

19 Q And was anything done to correct the situation?

20 A Yeah. The profit center manager brought in a
21 portable heater.

22 Q Did the union object to the portable heater being
23 there?

24 A No.

25 Q Did the union ask to end the negotiations early

1 because of the temperature?

2 A No.

3 Q Are you aware of any issues relating to the
4 operations of the men's restroom during the
5 negotiations?

6 A Can you repeat that, please.

7 Q Are you aware of any issues relating to the
8 operations of the men's restroom at the Franksville
9 profit center?

10 A It was reported by one of the -- Local 139 there
11 was an issue with one of the toilets.

12 Q And what was done to correct that issue?

13 A It was fixed.

14 Q Did the union ever complain about the length of
15 time that Sunbelt spent during caucuses?

16 A No.

17 Q During the caucuses that you said occurred in
18 Mr. Anderson's office, did Sunbelt spend any of the --
19 the negotiation team spend any time on personal matters?

20 A No.

21 Q Generally, what were the hours of negotiations
22 for the two parties?

23 A 8:00 to 2:30.

24 Q Were personal matters discussed during
25 negotiation sessions?

1 A Yes.

2 Q Could you describe that, sir.

3 A Asking Greg his experience as a local military
4 member, a veteran, having him share a little bit of his
5 story, and then thanking him during that session for his
6 services.

7 Q Any other personal matters that were raised by
8 the parties?

9 A During the first session, getting to know the
10 Local 139, and Mr. Ervin, realizing that he's a
11 professor, a teacher at one of the local schools.

12 Q Did you think that those two discussions with
13 Mr. West and with Mr. Ervin were a waste of negotiation
14 time?

15 A No. I think it's part of the negotiations to get
16 to know the other parties.

17 Q Does that occur at your other negotiations?

18 A Yes.

19 Q You know Chris Pender, correct?

20 A Yes.

21 Q Are you aware of Mr. Pender interrogating any
22 Sunbelt employees?

23 A No.

24 Q Are you aware of any -- of Mr. Anderson
25 interrogating any Sunbelt employees about their union

1 sympathies or activities?

2 A No.

3 Q You mentioned that at one of the sessions,
4 someone on the union's negotiating team raised an issue
5 regarding Mario Rivera?

6 A Yes.

7 Q Do you recall what the issue was?

8 A That Mario had threatened or alleged to have made
9 a statement that would have been perceived as
10 threatening to one of the local members.

11 Q And when did that alleged threat occur, sir?

12 A I don't recall.

13 Q Did they identify it, when it occurred? Did the
14 union identify it?

15 A The date?

16 Q The date, yes.

17 A It was the weeks leading up to that negotiation
18 session. I don't recall the date.

19 Q Did Sunbelt indicate to the union what it would
20 do regarding their issue with Mr. Rivera?

21 A Yeah. We thanked them for sharing that and
22 bringing it to our attention, and then that a full
23 investigation would be done on it.

24 Q And was a full investigation done on it?

25 A Yes.

1 Q Do you know who conducted that investigation?

2 A Yes.

3 Q Who did?

4 A Rebel Strohmeier.

5 Q And did Ms. Strohmeier report to you what the
6 results were of her investigation?

7 A Yes.

8 Q And what was the result of that investigation?

9 A That it was benign.

10 Q Did you inform the union of that, sir?

11 A We informed them that an investigation was done,
12 and nothing was found of note.

13 Q Was there any other safety issue raised by the
14 union during the negotiations?

15 A Yes.

16 Q And what was that, sir?

17 A That there was a driver -- allegedly there was a
18 driver that was not wearing a harness at the time of
19 loading a piece of equipment.

20 Q Did they provide you with any additional
21 information regarding the driver?

22 A Yeah. They had sent over a photo.

23 Q And what was done based on receiving that photo,
24 sir?

25 A We responded back to Dan looking for clarity,

1 because the photo that was given to us didn't give us
2 the details needed to discern or determine who it was.

3 Q Did that photo have a date on it?

4 A I don't recall.

5 Q Did Mr. Marsolek provide you -- or provide anyone
6 at Sunbelt with additional information regarding that
7 photo?

8 A He did not.

9 Q What else did Sunbelt do with respect to that
10 photo?

11 A We just went back around to everybody and made
12 sure everybody understood the policies, procedures and
13 requirements, more so as a coaching or a mentoring
14 moment than anything else, but we couldn't identify who
15 it was, so we don't know if it happened or not.

16 Q So did you give an investigation of that photo to
17 anyone or -- in particular?

18 A I don't know. That would have been done by Bryan
19 Anderson.

20 Q Which companies have received the business that
21 Sunbelt has lost due to the bannering and inflatables?

22 MR. WIESE: Objection, relevance.

23 MS. HILL: It's relevant for purposes of the
24 justification for the reorganization of this location.
25 The competition is right across the street from -- one

1 of the locations is right across the street from Sunbelt
2 and, you know, equipment is being -- we have photographs
3 of equipment supposedly leaving Sunbelt's yard maybe
4 from the competition.

5 JUDGE ROSAS: Okay, hold on, because that would
6 have to come in the form of testimony.

7 Is General Counsel and Charging Party disputing
8 the rationale for the reorganization?

9 MR. WIESE: I mean we would -- it's unlawful,
10 yeah.

11 JUDGE ROSAS: Is there justification, is there
12 proper justification?

13 MR. WIESE: Yeah, I mean --

14 JUDGE ROSAS: All right. I'm going to overrule
15 the objection, but you can renew your objection based on
16 testimony. Okay?

17 MR. WIESE: Thank you, your Honor.

18 JUDGE ROSAS: Overruled.

19 You can answer.

20 THE WITNESS: Ahern and United Rentals.

21 BY MS. HILL:

22 Q Aren't they unionized by the Local 139, to the
23 best of your knowledge?

24 A They are not.

25 JUDGE ROSAS: What did you say, 800?

1 THE WITNESS: Ahern.

2 JUDGE ROSAS: Ahern?

3 MS. HILL: Yeah. A-h-e-r-n.

4 THE WITNESS: Sorry about that.

5 BY MS. HILL:

6 Q All right. You've discussed the August 8th
7 negotiation session, sir. Were there any other
8 negotiation sessions after that?

9 A The following week.

10 Q Again, that was held at the Franksville location?

11 A Yes.

12 Q And what was discussed during that negotiation
13 session?

14 A The severance for the two remaining bargaining
15 unit members.

16 Q And was there actual negotiation regarding the
17 amount of the severance?

18 A Yes.

19 Q Did Sunbelt change its proposal to reflect the
20 union's suggested revision?

21 A Yes.

22 Q Now, the two individuals who received the
23 severance, they were both in the bargaining unit,
24 correct?

25 A Yes.

1 Q Did they -- were they eligible for rehire?

2 A Yes.

3 Q And do you know who informed them of their
4 layoff?

5 A Yes. That would have been the manager.

6 Q Mr. Anderson?

7 A Yes.

8 Q Were you present during -- when the two
9 individuals were informed about their layoff?

10 A Not in the office itself, but I was on the
11 premises.

12 Q Were they -- the two individuals, were they
13 permanently laid off?

14 A No.

15 Q Are they eligible for rehire?

16 MR. WIESE: Objection, leading.

17 JUDGE ROSAS: Sustained.

18 BY MS. HILL:

19 Q What is their status with respect to their
20 layoff, sir?

21 A They could be rehired.

22 Q And how would they have to go about doing that,
23 sir?

24 A Apply.

25 Q To the best of your knowledge, sir, have either

1 of those individuals applied for a position within
2 Sunbelt?

3 A Not that I'm aware of.

4 Q There has been some testimony about a position
5 called operations manager.

6 A Uh-huh.

7 Q Are you familiar with that, sir?

8 A Yes.

9 Q And does Wisconsin have an operations manager?

10 A Yes.

11 Q Where?

12 A In Franksville, Wisconsin.

13 Q Whose decision was it to have an operations
14 manager for Franksville?

15 A Mine.

16 Q And why did you decide to have an operations
17 manager?

18 A The location, with the recent influence in the
19 market, couldn't sustain a full-on profit center manager
20 anymore. They didn't have the ability to support that
21 position.

22 Q So if it doesn't have a full-time profit center
23 manager, what does it have?

24 A It has an operations manager.

25 Q And is that operations manager supervised

1 directly by you or by someone else?

2 A No. They are overseen by the manager out of
3 Waukesha.

4 Q And who was that, sir?

5 A Robert Rivera.

6 Q So the operations manager is physically located
7 at the Franksville location, correct?

8 A Yes.

9 Q Was he a Sunbelt employee prior to becoming the
10 operations manager?

11 A Yes.

12 Q And where was he employed?

13 A In -- at the Pump & Power HVAC location in
14 Waukesha.

15 Q And what position did he hold there?

16 A He was the ERS there.

17 Q With respect to -- you said the profit center
18 manager at Sun -- at Waukesha supervises him, correct?

19 A Yes.

20 Q Are you referring to the General Tool profit
21 center manager?

22 A Yes.

23 Q Are there still outside sales representatives at
24 the reorganized Franksville profit center?

25 A Yes.

1 Q During the negotiations on August 8th and August
2 16th, 2019, did the union ask what was going to happen
3 to the outside sales representatives?

4 A Not that I recall.

5 Q What is the role of the outside sales
6 representatives at the reorganized Franksville profit
7 center?

8 A To prospect and identify and develop new business
9 and sustain existing business.

10 Q Did you authorize the transfer of any of the
11 Franksville employees who were in the bargaining unit at
12 Franksville before the reorganization?

13 A No.

14 Q Mario Rivera, you said there was a complaint made
15 by the union regarding him and there was an
16 investigation of it.

17 What position did Mr. Rivera hold at the
18 Franksville location?

19 A He was a technician.

20 Q Inside shop?

21 A Yes.

22 Q And where is Mr. Rivera currently working, if you
23 know?

24 A Climate Control.

25 Q And when did he move into Climate Control?

1 A I don't recall.

2 Q Are there any mechanics or drivers at the
3 Franksville location currently?

4 A No.

5 Q Are you aware of the decertification petition
6 that was filed with the NLRB regarding the Franksville
7 location?

8 A Yes.

9 Q How did you become aware of it?

10 A Through the posting that was put in the shop.

11 Q So the first time was when you saw the posting?

12 A Yes.

13 Q Did you ask anyone to file that decertification
14 petition?

15 A No.

16 Q Did you consult with Mr. Pender over the decision
17 to reorganize the Franksville profit center?

18 A No.

19 Q Through any of the negotiation sessions that you
20 attended, did you hear the union complain about Jamie
21 Smith's work hours being reduced?

22 A I don't recall.

23 Q Did you consult with Mr. Bogardus at all
24 regarding the reorganization of that profit center?

25 A No.

1 MS. HILL: Okay. If could I have a minute, your
2 Honor.

3 JUDGE ROSAS: Sure.

4 MS. HILL: Okay. A couple more questions. I'm
5 sorry, your Honor.

6 BY MS. HILL:

7 Q First, during negotiations with 139, did you ever
8 hear them discuss the National Training Fund?

9 A Yes.

10 Q Explain what you heard them discuss regarding the
11 National Training Fund.

12 A Can you repeat the question.

13 Q What did the union discuss regarding the National
14 Training Fund?

15 A What it was used for and where it's at.

16 Q Anything of -- was it one of their proposals?

17 A Yes.

18 Q And what was their proposal regarding that Fund?

19 A I don't recall.

20 Q Was it to contribute money?

21 A Yes.

22 Q What, if anything, was Sunbelt's response to
23 that?

24 A That we have our own internal training that we
25 run our technicians and drivers through, so we would

1 elect to run them through that program as opposed to
2 contributing to the National Training Fund in Texas.

3 Q Did the union at any time during negotiations
4 indicate that the training that Sunbelt provided its
5 drivers and mechanics was inadequate?

6 A No.

7 Q Did the union ever say that they wanted to caucus
8 someplace other than in the conference room?

9 A Not that I recall.

10 MS. HILL: No further questions at this time,
11 your Honor. Pass the witness.

12 JUDGE ROSAS: Cross? Do you need a few minutes?

13 MR. WIESE: Yeah, five minutes.

14 JUDGE ROSAS: Okay. We'll go off the record and
15 take a break.

16 Please don't discuss your testimony with anyone.

17 THE WITNESS: Thank you, your Honor.

18 (Recess.)

19 JUDGE ROSAS: Back on the record.

20 General Counsel, cross examination.

21 MR. WIESE: Thank you, your Honor.

22 CROSS EXAMINATION

23 BY MR. WIESE:

24 Q Mr. Mayfield, besides Ms. Hill, did you discuss
25 your testimony with anybody else?

1 A No.

2 Q Did you review any documents in preparation for
3 your testimony today?

4 A No.

5 Q Did you review any portion of the transcript from
6 the December hearing prior to testifying today?

7 A No.

8 Q With respect to the September 2018 bargaining
9 session with the union, that was the one that you
10 testified about that you did not attend, do you recall
11 that?

12 A Yes.

13 Q All right. Do you recall how soon before that
14 September session you became aware that you wouldn't be
15 attending that session?

16 A I don't recall.

17 Q Was it ahead of that session that you knew that
18 you wouldn't be attending?

19 A I don't recall.

20 Q Did you inform the union ahead of time that you
21 wouldn't be attending that session?

22 A I informed my counsel.

23 Q Besides your counsel, did you inform anybody
24 else?

25 A Not that I recall.

1 Q To your knowledge, did any member of Sunbelt's
2 negotiating team inform the union ahead of the September
3 negotiating session that you wouldn't be attending?

4 A I don't know.

5 Q There was some discussion on your direct about
6 dues checkoff. Do you recall that discussion?

7 A Yes.

8 Q And some payroll costs that may be associated
9 with that?

10 A Yes.

11 Q Who handles the payroll for Sunbelt?

12 A It's handled out of our support office back east.

13 Q And is that -- when you say "our support office,"
14 is that a Sunbelt support office?

15 A Yes.

16 Q So that's handled internally?

17 A Yes.

18 Q So to implement dues checkoffs, you wouldn't be
19 paying a company outside of Sunbelt to implement those
20 deductions, is that correct?

21 A Depending on who prints off the checks. I don't
22 know who prints off the checks, but --

23 Q But outside of the checks being printed off, to
24 the extent they are printed off, that's all handled
25 internally by your payroll department?

1 A I don't know.

2 Q If you look at Respondent Exhibit 6 which is in
3 the black binder.

4 A Okay.

5 Q So if you can identify which column in this
6 document indicates where the equipment is located? I
7 guess I'm just confused about that.

8 MS. HILL: Time frame?

9 MR. WIESE: At the time the document was created,
10 I guess.

11 THE WITNESS: I don't see a date on when the
12 document was created, but the time of which the transfer
13 occurred is archived.

14 BY MR. WIESE:

15 Q Okay. And then to the left of that date, so the
16 column -- there's a column "Date transferred," and then
17 to the left it says "To Loc."

18 A Yes.

19 Q And that would be the location that it was
20 transferred to?

21 A Yes.

22 Q All right. And then if you go to the far right
23 of the document, the column that says "Cur Loc" --

24 A Uh-huh.

25 Q -- do you see that one?

1 A I do.

2 Q What's the difference between those -- the "To
3 Loc" column and the "Cur Loc" column?

4 A It's one of the same. It's where it's going and
5 then where it currently sits, which would be the same.

6 Q I'm going to have you turn to the blue binder
7 now. I'd like to have you look at what's been marked as
8 General Counsel Exhibit 7H.

9 A Which page?

10 Q Page 1 of that document.

11 A Okay.

12 Q This has been identified as Sunbelt's proposal
13 regarding dues from the February 1st, 2019 negotiations.
14 Do you recall this proposal being presented by Sunbelt
15 at those negotiations?

16 A Yes.

17 Q Okay. And who presented this proposal for
18 Sunbelt?

19 A My counsel.

20 Q Did anyone from the Sunbelt negotiating team
21 highlight any differences in this proposal from prior
22 dues proposals made by Sunbelt?

23 A I don't recall.

24 Q Do you recall if there were any differences in
25 this proposal from prior dues proposals made by Sunbelt?

1 A Yeah, I don't recall.

2 MR. WIESE: Nothing further.

3 JUDGE ROSAS: Charging Party, anything?

4 MR. RYAN: Just a couple questions, your Honor.

5 CROSS EXAMINATION

6 BY MR. RYAN:

7 Q Mr. Mayfield, do you know how much it costs for
8 Sunbelt to deduct dues from wages?

9 A I do not.

10 Q But that was the basis for declining dues
11 checkoff?

12 A It was administrative costs with any additional
13 ancillary attached to a payroll check, right.

14 Q Right. So in the reorganization, part of that
15 was eliminating the service department, is that correct?

16 A Based on the reorganization, it did justify
17 having a service department.

18 Q Was the service manager terminated at the same
19 time?

20 A No. He was retained.

21 Q And why was he kept as opposed to the bargaining
22 unit employees?

23 A They're still administrative processes that have
24 to be checked off and reviewed to ensure that the
25 equipment, whether small, like a paint sprayer or a

1 breaker, was meeting the check-in requirements.

2 Q You mentioned operations manager at Franksville.
3 When did the operations manager come in?

4 A I don't recall the exact date.

5 Q Do you know a month?

6 A September.

7 Q And what's that person's name?

8 A Mike.

9 Q Do you know his last name?

10 A I don't recall Mike's last name.

11 Q If I can have you look in the blue binder,
12 Exhibit 12, General Counsel Exhibit 12.

13 A Page 1?

14 Q Yes. So I think you testified this was part of a
15 larger document that Mr. Ervin had provided at the June
16 meeting?

17 A Yes.

18 Q Did Mr. Ervin explain the purpose of that
19 document?

20 A Was to review those items that had been
21 provisions that had yet not to be TA'd.

22 Q Was it to confirm what had been TA'd?

23 A Well, there was both. There was conflicting.
24 There were some that had already been confirmed and
25 there were some that were not.

1 Q So that it makes sense to have a unified document
2 where everybody could ultimately agree yes, we've TA'd,
3 no, we haven't?

4 A No. It made sense to go over and review the ones
5 that we had yet to TA, but if we had already TA'd them,
6 why would we be wasting that time during the
7 negotiations to review something that was already agreed
8 to?

9 Q But it sounds like there was confusion over what
10 was TA'd?

11 A There was no confusion on Sunbelt's side of what
12 was TA'd.

13 MR. RYAN: I don't think I have anything further
14 right now.

15 JUDGE ROSAS: Any redirect?

16 MS. HILL: Yes, sir. I just want to make sure
17 that the record is clear on this.

18 REDIRECT EXAMINATION

19 BY MS. HILL:

20 Q At any time during the negotiations time period,
21 did Sunbelt provide the union with a draft agreement
22 that contained all of the TA'd provisions?

23 A Can you ask that again.

24 Q At any time during the year and a half of
25 negotiating with the 139, did Sunbelt provide the union

1 with a draft Collective Bargaining Agreement that had
2 the TA provisions in it?

3 A I don't recall.

4 Q And then with respect to the General Counsel's
5 Exhibit 12, I believe you testified that you said this
6 page was part of a bigger document that had the -- what
7 the union said were the TA provisions but on separate
8 pages, is that correct, sir?

9 A Yes.

10 Q And with respect to not just this one page for
11 General Counsel's Exhibit 12, I want to make sure I
12 understood your testimony that you believe the entire
13 document that the union had given Sunbelt, in addition
14 to the table of contents, that there was no confusion on
15 Sunbelt's side regarding what was TA'd, correct?

16 A Correct.

17 Q The issue of I believe you said in your earlier
18 testimony regarding those provisions was to make sure
19 that the language that was in the union's agreement
20 mirrored the language that was previously TA'd, is that
21 correct?

22 MR. WIESE: Objection, leading.

23 JUDGE ROSAS: Rephrase.

24 BY MS. HILL:

25 Q All right. The issue raised by Sunbelt with

1 respect to the TA provisions and the union's proposal to
2 sign off on that is part of General Counsel's Exhibit
3 12, can you describe what the issue or the concern was
4 that Sunbelt had with respect to that?

5 A Yeah. We identified that the language wasn't
6 aligned with prior TA'd provisions, so once we initially
7 found the one, then we started going through the others,
8 and we found additional ones besides the initial one.

9 Q And so what, if anything, did Sunbelt say to the
10 union with respect to those differences?

11 A Well, we communicated what was identified and
12 that further vetting was needed in order to ensure that
13 all of the language mirrored what had been TA'd at that
14 point.

15 Q So at that point did Sunbelt make a request of
16 the union regarding that further vetting?

17 A Yes.

18 Q What did Sunbelt ask?

19 A That those -- that that be reviewed to ensure it
20 was aligned with what we agreed to prior, TA'd prior.

21 Q And to do that comparison, did Sunbelt make a
22 request of the union?

23 A Yes.

24 Q And what was that request?

25 A To do that review and then e-mail over what the

1 adjustments were.

2 Q The service manager, you stated on cross
3 examination that he was needed to check in equipment.

4 Prior to the reorganization, did the service
5 manager check in equipment?

6 A Yes.

7 Q During negotiation sessions, did the union ever
8 complain about the service manager checking in
9 equipment?

10 A No.

11 MS. HILL: Okay. Nothing further.

12 JUDGE ROSAS: Any follow-up?

13 MR. WIESE: No, your Honor.

14 MR. RYAN: No, your Honor.

15 JUDGE ROSAS: Thank you, sir. You're excused.

16 Please don't discuss your testimony with anyone until
17 counsel tells you the case is over. All right?

18 THE WITNESS: Thank you, your Honor.

19 JUDGE ROSAS: Off the record.

20 (Discussion held off record.)

21 JUDGE ROSAS: Back on the record.

22 And this is Mr. Anderson?

23 MS. HILL: Yes, sir.

24 JUDGE ROSAS: Sir, I'll remind you that you're
25 still under oath.

1 THE WITNESS: Okay.

2 DIRECT EXAMINATION

3 BY MS. HILL:

4 Q Mr. Anderson, what is your -- what were your job
5 responsibilities when you started working at the
6 Franksville location in 2018?

7 A To oversee the operations of the Franksville
8 operation.

9 Q And what did that entail, sir?

10 A Management of the sales staff, the service staff
11 and overall business out of that facility.

12 Q When you mention "staff," what were your
13 responsibilities with respect to the staff?

14 A To manage the sales operations and the people.

15 Q Did you have the authority to hire, fire and
16 discipline at the Franksville location?

17 A Yes.

18 Q When you started at Franksville, what were your
19 priorities?

20 A First and foremost, to make sure that each
21 employee goes home at night. You know, in our industry,
22 we operate a lot of large equipment, and it can kill
23 somebody, so my number one priority is to make sure that
24 each employee is working in the safest manner as
25 possible and to make sure that everybody goes home to

1 their family at the end of the day.

2 Q Other priorities after that?

3 A To drive revenue for the company.

4 Q The equipment at your location at Franksville
5 when you started there, how would you describe it, sir?

6 A Kind of a hodgepodge. I mean we had a lot of big
7 equipment, we had a lot of small equipment. We had a
8 very profitable business.

9 Q With respect to the big equipment, when you
10 started there, what did you do with respect to the big
11 equipment?

12 A Can you repeat the question.

13 Q Okay. What, if anything, did you do with respect
14 to the big equipment at your profit center? This is
15 when you started as a profit center manager at
16 Franksville.

17 A Yeah. We rented big equipment.

18 Q And how would you describe the division of your
19 equipment, big and small?

20 A I would say we had a pretty fair mix, big and
21 small. Obviously, you know, the big equipment would pay
22 our bills. The small equipment would generate the
23 profit for the company.

24 Q What do you mean "generate the profit"?

25 A There's higher returns on the smaller equipment

1 than there is with the bigger equipment. There's higher
2 costs, and there's a very competitive market with
3 respect to the larger equipment.

4 Q Did you -- you just described sort of a theory of
5 how to run the Franksville location. Based on that, did
6 you make any adjustments to your fleet? This is when
7 you started.

8 A Yeah, when I had first got there, there was a
9 plan in place, something that Mr. Bogardus referenced as
10 a pro forma, and basically it was a plan to alter the
11 fleet at the location to make it more profitable for the
12 company.

13 Q What was to be done to alter -- to change it?

14 A They were going to be getting rid of more of the
15 larger stuff and focusing more on the smaller stuff to
16 generate more profit.

17 Q Was he -- now, he was the district manager.

18 A Right.

19 Q Did you have access to his ideas for the other
20 profit centers in the state?

21 A No. Just Franksville. He -- he called the
22 meeting, and he kind of showed us what the plan was. It
23 was something that was put together by our director of
24 operations, Dan Atwell, and, in my opinion, it made all
25 the sense in the world because we had a high volume of

1 foot traffic, and the smaller equipment generates more
2 profit, so with all respect -- I mean it was going to
3 generate a higher return kind of thing.

4 Q And what was your experience at Franksville based
5 on that what you call foot traffic?

6 A We generated a lot of revenue based off of
7 walk-in customers. We would average anywhere between
8 100 to \$150,000 a month in revenue simply from walk-in
9 customers swiping credit cards.

10 Q Now, you're the profit center manager you said at
11 Fond du Lac I believe you said, correct?

12 A Correct.

13 Q How does that compare, that dollar value, to Fond
14 du Lac?

15 A It doesn't even come close to comparing. We
16 probably have a tenth of their walk-in business.

17 Q And you said credit cards. So people who would
18 walk in --

19 A People who would just walk in and want to rent
20 equipment, small equipment, weed whackers, chainsaws,
21 floor grinding equipment, things that just can simply be
22 loaded into the back of their vehicle, and then they
23 would just pay for it, and then they would leave.

24 Q Did Franksville ever have a 35,000 pound
25 excavator in its fleet?

1 A No, not that I can ever remember.

2 Q And what is the color of Sunbelt's equipment?

3 A Green.

4 Q Are there any other colors for Sunbelt equipment?

5 A Yes. We do also have OEM-colored equipment as
6 well.

7 Q Would you please define OEM for the record.

8 A Original equipment manufacturer.

9 Q What does that mean for purposes of your fleet?

10 A So, for example, John Deere equipment is
11 generally yellow and gray. That would be considered an
12 OEM color.

13 Q Did you have that colored equipment in your
14 fleet?

15 A Yes.

16 Q Any other colors?

17 A Many other colors. A lot of Skyjack and JLG
18 scissors. Their OEM colors would be orange and gray and
19 white.

20 Q Any other colors?

21 A Yes. Genie scissors are blue and white. We also
22 had some of them. We had a very mixed fleet with
23 respect to color.

24 Q You're discussing Franksville, correct?

25 A I'm discussing -- well, that is correct, that is

1 Franksville, but that is pretty much any one of our
2 stores has the same.

3 Q I was going to ask at Fond du Lac, do you have --

4 A Fond du Lac also has OEM-colored equipment.
5 Anytime we are in a pinch and we need machines and
6 there's no time to paint it green, we take it how we can
7 get it so we can get it to the customers and make money
8 with it.

9 Q On or about March 22nd, 2019, did you instruct
10 Sunbelt employees to tell you about the union activities
11 of other Sunbelt employees?

12 A No.

13 Q On or about April 22nd or 23rd of 2019, did you
14 interrogate any of Sunbelt's employees about their union
15 sympathies?

16 A Absolutely not.

17 Q And why not?

18 A Because it's just something you do not do. I was
19 trained to not to do that.

20 Q On or about April 22nd or 23rd, did you
21 interrogate Sunbelt employees about their union
22 activities?

23 A No.

24 Q Did Franksville have a territory?

25 A They did.

1 Q And what was that territory?

2 A The southeastern portion of the Wisconsin state.
3 It would basically go down to the Illinois border up
4 to -- right about that Greenfield, southern Milwaukee --
5 or I'm sorry. It would be right about that Greenfield
6 line, and then it would go west over and down like in
7 the Lake Geneva area.

8 Q Was that the territory for Franksville during
9 your entire time as the profit center manager there?

10 A Yes. They did do some alterations to the
11 territory, I don't recall exactly what month, but they
12 were very minute changes, just simply to make it to
13 where it would be per zip code and not necessarily
14 highway line.

15 All of the reporting, the Dodge Reports, all of
16 these market studies that we would get were all done by
17 zip codes, so we were just trying to align them a little
18 bit better.

19 Q When you started as the profit center manager at
20 Franksville, how many mechanics did you have?

21 A Just a moment. Let me think about that.

22 I believe there was five.

23 Q And were they all employees of Sunbelt?

24 A Yes.

25 Q And you took over from Ms. Torgerson, correct?

1 A Katie Torgerson, correct.

2 Q And when you started, what was the condition of
3 the shop?

4 A It was a mess simply put. The mechanics there,
5 they -- they weren't all that mechanically inclined.
6 Some people would reference to them as maybe some like
7 parts changer. They could never really fix anything.
8 They weren't the kind of mechanics that knew to just
9 touch these two wires together and the machine would
10 function again. We would throw thousands of dollars of
11 parts at machines.

12 And when I also got -- right when I first got
13 there, they had outsourced a lot of that -- those
14 repairs because of the quality you can say of the
15 mechanics, the skill set of the mechanics.

16 Q The what?

17 A The skill set.

18 Q Thank you. When you're talking about outsourcing
19 the repairs of the equipment, did that end once you
20 became the profit center manager?

21 A No.

22 Q Do you have a dollar amount as to how much you
23 spent per month for outsourcing?

24 A So they were partaking in a program called tech
25 on loan with Terex Services. Prior to my getting there,

1 from December of 2017 to March of 2018, they spent
2 somewhere in the neighborhood of about 50 to \$60,000
3 with Terex Services, having them fix the equipment and
4 do the repairs that were outside of the skill set of our
5 current employees.

6 Q And you said a tech on loan. What does that
7 mean?

8 A That's simply just a company that provides a
9 mechanic to you, a technician.

10 Q So where was that tech -- that technician, that
11 mechanic located?

12 A He was gone by the time I got there. I was just
13 kind of cleaning up the tail end of the invoices when I
14 got there. That's why I know how much it costs. He was
15 there from December to March.

16 Q So he was physically at the Franksville property?

17 A He was working at the Franksville location.

18 Q One of your job responsibilities, did it include
19 the budget, preparing the budget?

20 A Yes.

21 Q How did you prepare -- first of all, let's start
22 off, which budget -- which year did you prepare a budget
23 for?

24 A The fiscal year -- fiscal year '19. Sunbelt runs
25 on a fiscal year, so it's a little bit challenging to --

1 Q From when to when?

2 A So it would be March -- or I'm sorry, May 1st,
3 2018 through April 31st, 2019.

4 Q When do you work on the budget for a profit
5 center?

6 A I don't know the exact dates. I'm thinking it's
7 generally some -- somewhere between like Februaryish I
8 believe is when we do them. I'm doing them right now.

9 Q All right. So you only did one budget for
10 Franksville, correct?

11 A For Franksville, correct.

12 Q All right. Now, what does a budget consist of?

13 A All the revenues, all of the costs and, you know,
14 ultimately profits.

15 Q Is fleet included as part of that?

16 A Yep, fleet would be considered a cost on the
17 budget.

18 Q Is there anytime during the year that there's an
19 adjustment to the fleet for -- or was there an
20 adjustment to the fleet for Franksville between the time
21 you started at Franksville to let's say June 1st of
22 2019?

23 A So when I first started there, they had this pro
24 forma they were calling it which was a fleet plan to
25 decrease the amount of larger equipment and increase

1 or -- yeah, increase the amount of smaller-type
2 equipment that was going to generate more profit.

3 We actually began executing that strategy in May
4 of 2018, maybe early June of 2018. We actually moved
5 about I think between 2 and \$3,000,000 worth of
6 equipment, we started executing it, and then we got
7 instructions from Mr. Mayfield to basically halt on
8 that.

9 Q Did he give you a reason for halting on it?

10 A No, he did not.

11 Q When you say you moved it, where did it get moved
12 to?

13 A It got moved to -- well, some of it -- most of it
14 was moved to the Waukesha location, but it was moved to
15 other locations within the state.

16 Q Did you participate in the negotiations with the
17 139?

18 A I did, yes.

19 Q Now, there are two binders, one that's blue, one
20 that's black.

21 A Yep.

22 Q The blue one, I'll refer to exhibits in there as
23 the General Counsel exhibits. The black ones are going
24 to be Sunbelt's exhibits.

25 A Okay.

1 Q And I would like you to look at Sunbelt

2 Exhibit --

3 A Black, right?

4 Q Black, right. No. 8, sir.

5 A Black number what, I'm sorry?

6 Q 8. There should be a numbered tab with a No. 8
7 on it, sir. If you would review it, and when you're
8 finished reviewing it, look up.

9 A Okay.

10 Q Do you recognize these documents?

11 A I do.

12 Q What are they, sir?

13 A They're my notes from that session.

14 Q And if you would look at 1411 through 14 -- just
15 a moment, I've got to get to the last page -- 1423.

16 A 1411 -- are you talking about these numbers on
17 the bottom?

18 Q On the bottom right-hand corner.

19 A 1411 through what?

20 Q 1423, sir.

21 A I didn't. I just looked at the first two.

22 Q If you would look at the rest of them, and I'll
23 ask you a couple more broader questions. Okay?

24 A Okay.

25 Q And let me give you one instruction. While

1 you're reviewing it, will you please see if all the
2 handwriting is yours.

3 A Okay.

4 Q Is all the handwriting on these pages yours, sir?

5 A As far as I can see, yes.

6 Q All right. Now, this indicates the first day for
7 negotiations for these notes was October 23rd, 2018,
8 correct?

9 A Correct.

10 Q Were there negotiations prior to October 23rd,
11 2018, sir?

12 A There was.

13 Q Do you recall the first negotiation session that
14 you attended?

15 A I do.

16 Q And do you recall who attended from the union?

17 A Not exactly.

18 Q Okay. Who do you recall at least as of right
19 now?

20 A I recall myself, Jamie Smith, Mike Ervin, Steve
21 Buffalo, I believe Terry McGowan was present, and Greg
22 West and Dan, you, Jason, Bo and myself.

23 Q If you would please look at the blue binder and
24 look at GCX 15. They are numbered -- they have numbered
25 tabs on them.

1 A GCX 15?

2 Q Yes, sir.

3 A I don't see it.

4 MS. HILL: Your Honor, may I approach?

5 JUDGE ROSAS: Uh-huh.

6 THE WITNESS: Oh, I take that back.

7 MS. HILL: Okay. Never mind.

8 THE WITNESS: Okay. 15. Okay.

9 BY MS. HILL:

10 Q Do you recognize Exhibit 15, sir?

11 A I do.

12 Q What is that, sir?

13 A Some ground rules for the negotiations, ground
14 rules if you will. This was presented to us from the
15 union.

16 Q Was this something that the union wanted Sunbelt
17 to agree to?

18 A Yes.

19 Q Did Sunbelt agree to these ground rules?

20 A Yes.

21 Q Do you recall any of the discussions regarding
22 the ground rules?

23 A No.

24 Q Did you miss any of the negotiation sessions?

25 A Yes.

1 Q When did -- which ones?

2 A September.

3 Q September. Why?

4 A For the birth of my daughter.

5 Q During any of the period of time that the
6 negotiations were going on at your profit center, did
7 anyone in management at Sunbelt tell you that Sunbelt
8 did not intend to reach an agreement with Local 139?

9 A No.

10 Q Do you recall any discussion during that first
11 negotiation session regarding location for caucusing?

12 A Location for caucusing?

13 Q For caucusing.

14 A Yes. We told them we were going to caucus in my
15 office.

16 Q And do you recall what Sunbelt told the union
17 regarding where they can caucus?

18 A In the -- to negotiate in our conference room
19 where we were negotiating.

20 Q Did your profit center in Franksville have any
21 other location where the union could caucus?

22 A No.

23 Q And how did the negotiations --

24 A I mean --

25 Q Oh, I'm sorry.

1 A -- I suppose they could have caucused in our
2 break room, but it would have been inconvenient because
3 if employees needed to eat lunch, that wouldn't have
4 worked.

5 Q And did all the employees eat lunch at the same
6 time?

7 A No.

8 Q You had staggered --

9 A We had staggered schedules.

10 Q How did the negotiation sessions start?

11 A With a safety moment.

12 Q Did you ever present a safety moment?

13 A I did.

14 Q And what was the topic?

15 A Deer. If I'm not mistaken, I believe it was
16 right around the time when hunting was going on, so we
17 talked about keeping your eyes open for deer because
18 they were on the move at that time.

19 Q Is there any other time during the year that
20 there should be a concern about deer?

21 A During the rut. In my opinion, during the rut,
22 usually, you know, September, late August, September,
23 and then right around hunting season, too, or pretty
24 much from late August all the way through February,
25 because hunting in Wisconsin takes place through almost

1 that entire time.

2 Q Did the union ever complain that Sunbelt was not
3 prepared to negotiate?

4 A Not that I can recall.

5 Q Was the union ever not prepared for negotiations?

6 A I can remember on many occasions when they were
7 not.

8 Q Could you explain that further, sir.

9 A There was a time Steve Buffalo didn't even show
10 up with his notebook. I mean he came with nothing.
11 There were times when their -- their documents didn't
12 match our documents. There were, you know, occasions
13 when they were talking amongst themselves where their
14 notes didn't match each others. It was a fairly regular
15 occurrence.

16 Q Did the union ever spend time during negotiations
17 discussing personal things?

18 A Yes.

19 Q Okay. Can you explain that.

20 A I remember a time when Mr. Ervin was talking
21 about him teaching a labor relations class. I also
22 remember a time when Greg West was talking about how he
23 doesn't believe in direct deposit or e-mail.

24 Q And as a result of Mr. West not believing in
25 e-mail, did that have an impact on Sunbelt for

1 negotiation purposes?

2 A It absolutely did. There was a lot of things
3 that could have been handled in advance that were not
4 able to be done because they -- he didn't believe in
5 e-mail. There were documents that could have been
6 e-mailed or exchanged in advance so that we could have
7 been more prepared when we came to the sessions.

8 Q Did the union provide justifications for the
9 proposals that it made to Sunbelt?

10 A Justifications for its proposals?

11 Q Yeah. Explain their proposals.

12 A No.

13 Q Did Sunbelt demand from the union that it explain
14 or provide a justification for its proposals?

15 A Yes.

16 Q And when was that?

17 A Well, pretty much throughout the bulk of the
18 sessions. We pretty much always explained reasoning for
19 why we -- for example, there was many times when they
20 were asking for us to move to economics, and we politely
21 explained to them that we were not going to move to
22 economics until all noneconomic things were taken care
23 of.

24 Q Now, directing your attention to General Counsel
25 Exhibit No. 15.

1 A Okay, yep.

2 Q Did these ground rules address that situation?

3 A If I'm not mistaken, there's something in here
4 that says --

5 JUDGE ROSAS: Do you need him to read from the
6 document or can we just refer to it?

7 MS. HILL: Can I direct his attention to it, your
8 Honor?

9 JUDGE ROSAS: (Nods head.)

10 BY MS. HILL:

11 Q I'm directing your attention to 7, item 7.

12 A There it is. "The parties shall decide all
13 language proposals before discussing wages."

14 Q And that was from the union, correct?

15 A That is correct. Another thing that I'll point
16 out is No. 5, "Negotiation sessions should average two
17 hours, not to exceed three hours." I can't ever
18 remember one time that we were in that room for less
19 than three to four hours.

20 Q During Sunbelt's caucuses, did Sunbelt's
21 negotiation team ever have questions for the union?

22 A Yes.

23 Q Do you remember a particular situation?

24 A Not off the top of my head.

25 Q Did the union ever mail its proposals to Sunbelt,

1 not e-mail, but just regular U.S. mail?

2 A No.

3 Q Did the 139 ask to negotiate wages?

4 A Yes.

5 Q Did Sunbelt agree to negotiate wages?

6 A Yes, once all noneconomic proposals had been
7 agreed upon.

8 Q Did Sunbelt refuse to negotiate at the times --
9 the times, not the dates, the times that the union
10 requested?

11 A Yeah. Pretty much in every negotiation sessions,
12 we set a date and a time for the next meeting. That
13 was, you know, one of the first things that we would do.

14 Q But did Sunbelt refuse to do that?

15 A No.

16 Q Was there a problem with the temperature in the
17 conference room where negotiations were held?

18 A Yes.

19 Q And could you explain that situation.

20 A So there was one day -- one of the coldest days
21 of the winter where it was pretty cold in the conference
22 room. I contacted Southport Heating & Cooling and had
23 them come out and take a look, and I also brought in a
24 space heater to make sure that the -- to help with
25 respect to the temperature in the room.

1 Q And did the union complain about the temperature
2 after the space heater was brought in?

3 A Yes.

4 Q After it was brought in?

5 A Yes.

6 Q They still did?

7 A Yes.

8 Q Were you present when the union raised two safety
9 concerns, one involving a driver and another involving
10 Mr. Mario Rivera?

11 A I remember the Mario situation. They had
12 mentioned that -- somebody said that Mario was
13 threatening to shoot somebody.

14 Q And who made that allegation?

15 A I don't recall. I think it was Greg West.

16 Q Do you recall a concern about a driver who wasn't
17 using the proper safety precautions?

18 A I do.

19 Q And what do you recall about that, sir?

20 A They sent me a picture from a pretty far away of
21 a driver operating a manlift with no harness. On
22 several occasions I asked them for the date and the time
23 so that I could investigate it, and they never really
24 did provide me a date and a time. They were very vague
25 in their response like oh, sometime in this month, and

1 for me to go back and review a month's worth of
2 surveillance footage was very time consuming. In fact I
3 tried, but I was unsuccessful in locating that footage.

4 Q So you were the one who conducted the
5 investigation into that particular allegation from the
6 union?

7 A That is correct.

8 Q Did you delegate that investigation to anyone
9 else?

10 A No.

11 Q Were you present during the negotiations
12 regarding the reorganization and the layoff of two
13 individuals working at the Franksville location?

14 A Yes, I was.

15 Q During that negotiation session, did the union
16 ask when the big equipment would be removed?

17 A No, they did not.

18 Q Did the union ask how the equipment at the
19 Franksville location would be washed?

20 A No, they did not.

21 Q Did the union ask who would perform the
22 preventive maintenance on equipment at Franksville after
23 the reorganization?

24 A I don't think so.

25 Q Did the union ask which pieces of equipment would

1 be left at the Franksville location?

2 A No.

3 Q When did you find out about the reorganization?

4 A That day.

5 Q The day of the negotiations?

6 A The day of the negotiation sessions, Jason
7 Mayfield pulled me aside and said this is what we're
8 doing here today, we're going to be laying off these two
9 employees.

10 Q Now, there has been some testimony about an issue
11 relating to the men's restroom. Could you please
12 explain.

13 A I can. It looked -- well, it was brought to my
14 attention by the union that our toilet was not
15 functional. When I went in there and I looked, it
16 appeared that somebody had removed the chain from the
17 flush handle. So I simply just put the chain back on
18 the flush handle and the issue was fixed.

19 Q Had there been any issues with the men's toilet
20 prior to that negotiation session?

21 A No, nor was there after.

22 Q With respect to determining the budget that you
23 had to prepare, did you -- what did you look at to help
24 you make the determination for what you referred to as
25 revenue and profitability?

1 A We use several market study reports, one of which
2 is called Dodge Reports. That just simply tells us how
3 much construction spend is going to be spent in that
4 market on construction.

5 Another report that we have access to is what
6 they basically call a Put in Place report, and a Put in
7 Place report, it basically does the same thing as the
8 Dodge Report, it just tells you how much construction
9 dollars are going to be spent in these markets.

10 And then we would also look at, you know, past
11 and historical growth rates and, you know, our support
12 office expectations, and then we would line it
13 altogether with the budget.

14 Q So you say you were working on the budget for
15 Franksville in February --

16 A Uh-huh.

17 Q -- of 2019, correct?

18 A Right.

19 Q And it was to be finalized by when?

20 A Generally they give you about four weeks to
21 complete a budget, anywhere between three and four
22 weeks.

23 Q With respect to that budget, how did Franksville
24 do after it was -- the budget was implemented?

25 A So after the budget was implemented -- you know,

1 the store prior to 2/2018 -- well, prior to about June,
2 July of 2018, the store historically performed very
3 well, anywhere between 30 and 40 percent growth rate.

4 After the union, you know, ramped up their
5 bannering activities, those numbers decreased very, very
6 rapidly. Last I looked, they were at a negative 47
7 percent decrease rate in revenue.

8 Q And when was the last time that you looked at the
9 revenue?

10 A About a week ago.

11 Q In June of 2019, how did the Franksville profit
12 center compare to the budget, if you recall?

13 A Significantly under budget.

14 Q Double digits?

15 A It's hard to say for that exact month, but I can
16 tell you that -- all I can tell you is that it was
17 decreasing at a very rapid pace. It was at a 40 percent
18 upswing, and it went to a minus 47 percent decrease
19 over -- basically from approximately I would say May
20 until this point.

21 Q In the summer of 2019, did the driver work any
22 overtime?

23 A Can you please refer to which driver.

24 Q Okay. Which drivers did you have employed in the
25 summer of 2019?

1 A In the summer of 2019, we had one driver, Jamie
2 Smith.

3 Q And to the best of your recollection, did he work
4 any overtime?

5 A As the revenue was decreasing, we had to align
6 the overtime rate with that, so it's my recollection
7 that he probably did not work overtime. In some
8 instances I don't know that he got 40 hours.

9 Q Did Mr. Smith complain to you that he was not
10 working enough overtime or he wanted to --

11 A No. Jamie was the kind of employee, he never
12 wanted to work any overtime, he never wanted to do
13 anything extra. He was only -- he was only working
14 there for the insurance.

15 Q Is that what he told you, sir?

16 A He's made comments about that, yeah.

17 Q Did Mr. Smith indicate to you during the summer
18 of 2019 or maybe the spring through the summer of 2019
19 that he wanted his work schedule changed?

20 A He did.

21 MR. WIESE: Objection, relevance.

22 JUDGE ROSAS: Sustained.

23 BY MS. HILL:

24 Q Okay. With respect to Mr. Smith, and you said
25 that you didn't believe that he was working overtime,

1 was he still a full-time employee --

2 A Yes.

3 Q -- who could get the benefits that he requested?

4 A Yep.

5 Q Did you have any discussions with the union about
6 making -- reducing Mr. Smith's hours?

7 A I did not.

8 Q At any of the negotiation sessions, did the union
9 complain about Mr. Smith's hours being reduced?

10 A They did not. I will say that --

11 JUDGE ROSAS: There's no question, sir.

12 THE WITNESS: Oh, okay. I'm sorry.

13 BY MS. HILL:

14 Q With respect to the negotiations, did Mr. Smith
15 attend the negotiation sessions that you were at?

16 A He did.

17 Q Looking at Exhibit -- and this is going to be in
18 the black binder, sir.

19 A Okay.

20 Q Exhibit 9, sir.

21 A Okay.

22 Q Now, this is -- it starts at 0024 and goes to 46.
23 Do you see that, sir?

24 A Yes.

25 Q Do you recognize the first two pages of this

1 exhibit, sir?

2 A I do.

3 Q Page one, what is this, sir?

4 A It's the lost revenue due to bannerling.

5 Q Did you prepare this, sir?

6 A I did not.

7 Q Who did?

8 A Bo Bogardus.

9 Q Did you help him with this, sir?

10 A I gave him -- okay, so every time a piece of
11 equipment was called off due to -- and when I say called
12 off, I mean the rental period was ended, I had my
13 employees keeping those rental contracts in a folder, so
14 I gave Mr. Bogardus what I had with respect to equipment
15 that was removed from job sites due to bannerling.

16 Q Are these documents that start on 0026 to 0046,
17 are those the documents that you say you put in a
18 folder?

19 A Yes. There's a -- yes.

20 Q Were there any additional documents that were in
21 the folder?

22 A Not to my knowledge.

23 Q And to the best of your knowledge -- oh, page two
24 of this exhibit, sir, did you prepare this?

25 A No.

1 Q Do you know who did?

2 A I believe Mr. Bogardus.

3 Q To the best of your knowledge, sir, are the
4 numbers that are reflected on the first page of this
5 exhibit accurate?

6 A I would say at some point they probably were.
7 Now, the number is going to be much greater because I
8 believe this was probably prepared months and months
9 ago.

10 Q While you were at the profit center at
11 Franksville, did you ever deliver equipment?

12 A Yes.

13 Q During negotiations, did the union ever complain
14 that you delivered equipment?

15 A No. In fact we had -- I'm thinking we had TA'd a
16 proposal anything 10,000 pounds or less could be
17 delivered by anybody at the facility.

18 Q And the piece of equipment or the equipment that
19 you did deliver, sir, was that less than 10,000 pounds?

20 A Yes.

21 Q Did you ever tell one of the laid-off bargaining
22 unit mechanics that Sunbelt would be starting over?

23 A No.

24 Q Did you ever tell one of the laid-off bargaining
25 unit mechanics that Sunbelt would be hiring new

1 employees?

2 A No.

3 Q Did you ever tell one of -- or both of the
4 laid-off bargaining unit mechanics that they could
5 reapply for any new positions that would open up in the
6 district?

7 A Can you repeat the question, please.

8 Q Did you ever tell either or perhaps both of the
9 bargaining unit mechanics who were laid off that they
10 could apply for any open position within the district?

11 A I told them that they were both eligible for
12 rehire, and then I encouraged them to apply for any open
13 positions that they felt they were qualified for.

14 Q Did you authorize the transfer of any of the
15 employees in the bargaining unit during the two to three
16 weeks prior to the reorganization?

17 A No.

18 Q What position did Mario Rivera hold with Sunbelt?

19 A He was a mechanic.

20 Q At which location?

21 A At the Franksville location.

22 Q At the time of the reorganization, was Mr. Rivera
23 still employed at the Franksville location?

24 A I believe so.

25 Q In what position?

1 A Mechanic.

2 Q Was he physically working at the location at that
3 time?

4 A Yes.

5 Q Do you know where he currently works?

6 A At the Climate Control Division in Waukesha.

7 Q And how did that come about?

8 A There was an open requisition -- they were hiring
9 for a mechanic, and he applied for the mechanic position
10 over there.

11 Q Did you have anything to do with getting him
12 transferred to that location?

13 A No.

14 Q Gary Stamm, do you know him?

15 A I do.

16 Q At the time of the reorganization, what position
17 did he hold?

18 A Equipment rental specialist.

19 Q How did it come about that he held that position?

20 A He -- he was an ERS at a point in time prior to
21 my taking over the PC in Franksville. He then would --
22 right when I first got there, he was requesting a pay
23 increase, a very substantial pay increase because he had
24 some other offers from some other companies, and we
25 essentially told him that the only way we were going to

1 be able to get him the money that he was looking for was
2 to become a driver, and he was a driver for a period of
3 time. I don't recall.

4 And then we had an equipment rental specialist
5 quit and go to work for a different company, and at that
6 point in time, Gary Stamm applied for the ERS, equipment
7 rental specialist, position, and he was the most
8 qualified candidate for the job.

9 Q So when he was working as a driver, was he part
10 of the bargaining unit, the group of people who would be
11 covered by the contract being negotiated with the 139?

12 A He would have been, yeah.

13 Q Are you aware of a decertification petition that
14 was filed with the National Labor Relations Board?

15 A I am.

16 Q And how did you find out about that, sir?

17 A I was served with some papers from the National
18 Labor Relations Board that there was a decertification
19 petition filed.

20 Q Would you please look in the black binder,
21 Exhibit 10, sir. And if you would look at all the
22 documents that are in that tabbed section, sir.

23 JUDGE ROSAS: Counsel, please refer to exhibits
24 as General Counsel's or Respondent's exhibits, in
25 addition to whatever other designation, but just so the

1 record is clear.

2 MS. HILL: Okay. Respondent's Exhibit 10, sir,
3 in the black binder.

4 THE WITNESS: Yep, got it.

5 BY MS. HILL:

6 Q Would you please look at all the pages for that.

7 Do you recognize these documents, sir?

8 A I do.

9 Q Are these the documents that you referred to as
10 the first time you --

11 A Yes.

12 Q -- learned about the decertification?

13 A Uh-huh.

14 Q Now, if would you please look -- and please look
15 at the numbers on the lower right-hand corner, sir --

16 A Yes.

17 Q -- at 1502.

18 A Okay.

19 Q Is any of the handwriting yours, sir?

20 A No.

21 Q And in particular, I just want to verify, looking
22 at about a quarter of the way down, section 3a, it
23 appears to be your name there, correct?

24 A Uh-huh.

25 Q Is that your handwriting, sir?

1 A It is not.

2 Q What, if anything, did you do when you received
3 what has been marked as Respondent's 10, sir?

4 A I posted it up in the common areas of the
5 building where it had the most foot traffic.

6 MS. HILL: Your Honor, at this point I would like
7 to have Respondent's Exhibit 10 admitted.

8 MR. WIESE: I guess I have no objection. I'd
9 just like to note that it appears to be the same
10 document as General Counsel Exhibit 38.

11 JUDGE ROSAS: Any objection, Charging Party?

12 MR. RYAN: No objection.

13 JUDGE ROSAS: Respondent's Exhibit 10 is
14 received.

15 MS. HILL: Thank you.

16 (Respondent's 10 was received.)

17 BY MS. HILL:

18 Q Now, sir, I apologize, what if anything did you
19 do with this?

20 A I posted it. I posted it in the break room, I
21 posted it by the time clock, and I posted it on the door
22 between the shop and the showroom.

23 Q And why did you post it there, sir, at those
24 three locations?

25 A Because on the bottom of Page R 10, it actually

1 says that it's required to.

2 Q But why at those particular locations?

3 A So that every -- I mean those were the most
4 commonly used areas in the building, and I wanted to
5 make sure that everybody saw it.

6 Q Sir, if you would look at the same binder you're
7 in, if you would look at Respondent's 39.

8 A Where's that?

9 Q Tab 39. It's right behind 15, sir.

10 A I got it, yep.

11 Q Do you recognize the three pages of that Exhibit
12 R 39, sir?

13 A Yes, I do.

14 Q What are those photographs of, sir?

15 A On page 39, as I stated, I posted it between the
16 doors of the shop and the showroom, so that would be
17 page 30 -- I'm sorry, Sunbelt 0231. The picture of 0232
18 is posted in the break room. And 0233, you can see it
19 posted it there next to the -- on the door next to the
20 punch clock.

21 MS. HILL: Your Honor, at this point I request
22 that R 39 be admitted. These are the color copies of
23 what had been the earlier part of another exhibit that
24 General Counsel used.

25 MR. WIESE: No objection.

1 MR. RYAN: No objection.

2 JUDGE ROSAS: Respondent's 39 is received.

3 (Respondent's 39 was received.)

4 BY MS. HILL:

5 Q Did you ever have a discussion with Mr. Gutierrez
6 about the decertification petition, sir?

7 A No.

8 Q Did you ever ask Mr. Gutierrez if his signature
9 was on the decertification petition?

10 A No.

11 Q Did Mr. Gutierrez ever tell you that his
12 signature had been forged on any document that was in
13 the profit center?

14 A No.

15 Q Mr. Anderson, did you have any input as to who
16 was going to be laid off from your profit center?

17 A No.

18 Q And who did?

19 A Jason Mayfield, our regional vice president.

20 Q And who is Chris Pender?

21 A Chris Pender was our service manager.

22 Q Was he also -- as a service manager, what were
23 his responsibilities?

24 A To oversee the operation of the shop and provide
25 mentor to the guys that were working in the shop.

1 Q So when you say guys in the shop, you're
2 referring to the shop mechanics?

3 A The mechanics, yeah.

4 Q Did your location have mechanics who were not in
5 the shop?

6 A We had one mechanic that also assumed the
7 responsibility of fixing the equipment that had issues
8 in the field as well.

9 Q And what was his title?

10 A I believe it was road mechanic. I can't remember
11 if he was a road mechanic or if he was just a shop
12 mechanic assuming those responsibilities.

13 Q Was that individual mentored by Mr. Pender?

14 A Yes.

15 Q Did you ever hear Mr. Pender say anything
16 derogatory about the union?

17 A No.

18 Q Did you ever hear Mr. Pender say that the union
19 would not get into the Franksville profit center?

20 A No.

21 Q Who assigned work to the shop mechanics and to
22 the individual who would also be out on the road
23 repairing things?

24 A Can you repeat the question.

25 Q Who assigned the tasks, the jobs, the repairs

1 that had to be done in the shop to the mechanics?

2 A Chris.

3 Q Mr. Pender?

4 A Yes.

5 Q When Mr. Stamm became an equipment rental
6 specialist, did he make any deliveries prior to the
7 layoffs?

8 A Yes.

9 Q Did any other Sunbelt employee, other than the
10 drivers and you said Mr. Stamm and yourself, make
11 deliveries prior to the layoffs?

12 A Yes.

13 Q Who was that?

14 A Our two sales reps, Tyler Sadowske and Ryan
15 Marifke.

16 Q Now, did any of the mechanics, shop mechanics
17 ever make any deliveries?

18 A Yes.

19 Q Who did?

20 A Pretty much everybody in the building did at some
21 point in time, so Al, Kyle, Mario, they've all made
22 deliveries.

23 Q Did Mr. Pender ever do -- handle any of the
24 preventive maintenance on Sunbelt equipment in
25 Franksville prior to the layoffs?

1 A Yes.

2 Q Did Sunbelt equipment at the Franksville location
3 have to get washed, cleaned up?

4 A Yes.

5 Q Who handled that, sir?

6 A Everybody.

7 Q Did you?

8 A There were times when I did.

9 Q During the negotiations, did you have to wash any
10 of the equipment?

11 A Can you repeat the question.

12 Q During the negotiations that covered several
13 months, did you ever have to wash any of the equipment
14 at your location?

15 A During the negotiation sessions?

16 Q Not during the sessions, but that time period.

17 A Yes.

18 Q Did you ever hear the union negotiating team
19 complain that you or Mr. Stamm or Mr. Pender were taking
20 work hours away from the bargaining unit members?

21 A No.

22 Q Other than the preventive maintenance, did Mr.
23 Pender do any repair work of equipment?

24 A Yes.

25 Q Could you describe that, please.

1 A His skill set was much more advanced than some of
2 the mechanics we had in the shop, so he would handle
3 some of those bigger repairs.

4 Q Did you have to use outside haulers?

5 A Yes, very frequently.

6 Q Could you define just frequently, sir.

7 A Prior to me getting to -- well, prior to me
8 taking over the Franksville facility, they spent
9 anywhere between -- and these are rough numbers -- 75
10 and \$100,000 in outside hauling over the course of a
11 year prior to me getting there. It then continued. We
12 were spending call it, I don't know, anywhere between 15
13 to 20,000 a month in outside hauling while I was there.
14 So yes.

15 Q Did you hire additional drivers to handle that
16 rather than having you use outside haulers?

17 A During my tenure, no.

18 Q And why not?

19 A So obviously -- well, as I was coming in, I was
20 still trying to get a feel for the business, and we
21 would generally try to keep an eye on the number, the
22 outside hauling number for a period of time to make sure
23 that it's consistent before we go and hire another
24 employee.

25 Right about the time that you would consider

1 yourself -- or consider it to be consistent enough to
2 maybe justify hiring another driver, the revenues
3 started tanking due to the bannering activities from the
4 union, so I guess you can say that we just never got
5 there.

6 Q When you started as the profit center manager,
7 how many drivers were there?

8 A Two.

9 Q And those two drivers were who?

10 A Jamie Smith and Troy Schuls.

11 Q Okay. Was Mr. Schuls there at the time -- at the
12 time of the reorganization?

13 A No.

14 Q Why wasn't he?

15 A He had been terminated. He was delivering a
16 piece of equipment to the airport when they asked --

17 MR. WIESE: Objection, relevance.

18 MS. HILL: Well, to show that it wasn't --
19 because there had been some allegations about trying to
20 get rid of bargaining unit members without
21 justification.

22 JUDGE ROSAS: When was he terminated?

23 THE WITNESS: I believe he was terminated -- I
24 don't remember the exact month. I'm guessing May.

25 JUDGE ROSAS: 2019?

1 THE WITNESS: 2000 -- it would be 2019.

2 JUDGE ROSAS: Overruled.

3 You can answer.

4 THE WITNESS: Mr. Troy Schuls was delivering a
5 piece of equipment to the airport when they asked for
6 some identification in order to allow him into the
7 airport. When they ran his driver's license, it was
8 suspended due to failure to pay a fine, and here we have
9 this guy sitting in a commercial motor vehicle with no
10 license. That was a big deal, and we did terminate him
11 for that.

12 BY MS. HILL:

13 Q Did the union, during any of the negotiation
14 sessions after that termination, demand an explanation
15 for the termination?

16 A No.

17 Q Was Mr. Schuls ever discussed during any of the
18 negotiation sessions?

19 A No.

20 Q And what position did Mr. Gutierrez have at your
21 profit center?

22 A Mechanic I.

23 Q And why was he terminated?

24 A For operating a manlift with no harness.

25 Q During the negotiation sessions that you

1 attended, did the union demand an explanation for why he
2 was terminated?

3 A No.

4 MS. HILL: Your Honor, if I could have a couple
5 minutes, I'll try to keep it very brief, just to review
6 my outline, sir.

7 JUDGE ROSAS: Sure.

8 (Recess.)

9 JUDGE ROSAS: On the record.

10 Anything else, Counsel?

11 MS. HILL: Sir, before I pass the witness, I
12 would like to move to have Respondent Exhibit 8 and
13 Respondent Exhibit 9 admitted into evidence, sir.

14 JUDGE ROSAS: Any objection?

15 MR. WIESE: Voir dire, please.

16 JUDGE ROSAS: Sure.

17 VOIR DIRE EXAMINATION

18 BY MR. WIESE:

19 Q Mr. Anderson, with respect to Respondent's
20 Exhibit 8, which is in the black binder again and I
21 believe you identified as your bargaining notes --

22 A Yes.

23 Q -- are these all the bargaining notes that you
24 took?

25 A Yes.

1 Q Were there sessions that you attended that you
2 didn't take bargaining notes?

3 A No. I just misplaced them and I don't know where
4 they are, so I gave them everything that I could find.

5 Q Okay.

6 A There's a possibility that when I left the profit
7 center in Racine or Franksville, that I may have left
8 them there.

9 Q But these are the only bargaining notes you have?

10 A Yes.

11 MR. WIESE: No objection to Respondent's 8.

12 MR. RYAN: No objection.

13 JUDGE ROSAS: Respondent's 8 is received.

14 (Respondent's 8 was received.)

15 MS. HILL: And No. 9.

16 MR. WIESE: Voir dire, please.

17 VOIR DIRE EXAMINATION

18 BY MR. WIESE:

19 Q Looking at page -- I guess it would be page one
20 of the exhibit, Sunbelt 0024 there.

21 A Yes.

22 Q The redacted information next to "Lost Revenue,"
23 do you know what that information was?

24 A I don't recall.

25 Q What about the redacted information on the

1 right-hand side of the document below "Total \$ Lost"?

2 A I don't recall.

3 Q Going over to page three of Respondent's Exhibit
4 9, Sunbelt-0026, the redacted information on this page,
5 do you know what that information is?

6 A Pricing.

7 Q Is that information --

8 A And the name of the person that ordered it.

9 Q With respect to the pricing information, would
10 that information exist in a non-redacted form at
11 Sunbelt?

12 A Yes.

13 Q And if you go through the rest of the exhibit
14 from 26 to the end, is it that same pricing information
15 that's redacted?

16 A Pricing and the name, yeah.

17 MR. WIESE: I'll object with respect to General
18 Counsel Exhibit 9. It's not the best evidence. It's
19 redacted. There's unredacted copies that exist.

20 MS. HILL: Excuse me. It's Respondent's Exhibit
21 9.

22 MR. WIESE: Thank you. Sorry.

23 MS. HILL: And then with respect to the redacted,
24 we already told General Counsel and the union that we
25 were going to keep the pricing out, it's confidential

1 information, and considering the fact that business was
2 going to the competitors and these documents were being
3 produced, that we didn't want these to be given to the
4 competitors for pricing information.

5 JUDGE ROSAS: The table --

6 MS. HILL: And it's not even relevant for
7 purposes of --

8 JUDGE ROSAS: Well, the table or cover page to
9 Respondent's 9, that is a compilation, that page and the
10 second page, I assume. With respect to all of the --
11 actually, there's not that many.

12 So the underlying information that's reflected on
13 this chart, Mr. Anderson, the first page of Respondent's
14 Exhibit 9 --

15 THE WITNESS: Okay, yep.

16 JUDGE ROSAS: -- where is this gotten from?

17 THE WITNESS: Where was it gotten from?

18 JUDGE ROSAS: Uh-huh.

19 THE WITNESS: I can't answer that because I
20 didn't produce it.

21 MS. HILL: Your Honor, I suggest that perhaps
22 Mr. Bogardus has already testified about it and --

23 JUDGE ROSAS: About Respondent's 9?

24 MS. HILL: Well, not Respondent's, but one of
25 their exhibits, they were asked about it, he was asked

1 about it, and there's information about it. He was
2 asked about rounding and everything else about it, too,
3 sir.

4 We were trying to show that Mr. Anderson has
5 provided at least, as he said, these documents that were
6 put into a folder and given to Mr. Bogardus based on a
7 request from Mr. Bogardus for this.

8 JUDGE ROSAS: Mr. Anderson, you generated page --
9 this first page, Respondent's Exhibit 9?

10 THE WITNESS: No.

11 JUDGE ROSAS: No, he did not.

12 MS. HILL: This is Mr. Anderson.

13 JUDGE ROSAS: Mr. Anderson, you did not give this
14 to Mr. Bogardus?

15 THE WITNESS: I did not.

16 JUDGE ROSAS: Okay. So who generated this
17 document?

18 MS. HILL: Pages one and two by Mr. Bogardus,
19 okay.

20 JUDGE ROSAS: But he didn't testify about this
21 specific document.

22 MS. HILL: Yes, sir, he did.

23 JUDGE ROSAS: He did?

24 MS. HILL: Yes.

25 JUDGE ROSAS: Respondent's 9, is that the same

1 one in his testimony?

2 MS. HILL: Well, General Counsel's equivalent
3 exhibit. It's in one of theirs. I'm sorry, your Honor,
4 I can't remember which one.

5 JUDGE ROSAS: So you have a counterpart to this
6 Respondent's 9?

7 MR. WIESE: That's correct, with -- again,
8 with -- so I have a counterpart of pages one and two of
9 Respondent's Exhibit 9 which are marked as --

10 JUDGE ROSAS: So you don't have an objection with
11 respect to pages one and two?

12 MR. WIESE: Only with respect to I guess the --
13 to the redacted portion of information which --

14 JUDGE ROSAS: Is your copy redacted?

15 MR. WIESE: It is. And Respondent -- I believe,
16 and correct me if I'm wrong, but the transcript reflects
17 that Respondent's counsel was going to inform me of what
18 that redacted information is, and we were going to fix
19 that issue once we resumed the trial, which has not
20 happened.

21 JUDGE ROSAS: That's the description of a
22 document at the top or something else after "Lost
23 Revenue"? I mean it's not an amount, is it?

24 MS. HILL: Your Honor, I'm sorry, I don't recall.
25 I don't know if it states -- I don't know -- I apologize

1 sincerely to your Honor, I just do not remember.

2 JUDGE ROSAS: But this is a counterpart to your
3 exhibit, right?

4 MS. HILL: Yes.

5 MR. WIESE: That's correct.

6 JUDGE ROSAS: It's in the same identical form?

7 MR. WIESE: That's correct.

8 JUDGE ROSAS: So it is what it is. But the
9 initial documents that are redacted as to amounts?

10 MS. HILL: Yes, sir. That's pricing. That's
11 something --

12 JUDGE ROSAS: Sure.

13 MS. HILL: It's not book value. It's something
14 that you can find just on the website. These are
15 negotiated between Sunbelt and particular customers,
16 sir.

17 JUDGE ROSAS: And these are evidence of a loss or
18 a justification for the steps taken by the Respondent,
19 correct?

20 MS. HILL: Yes, sir.

21 JUDGE ROSAS: Okay. See, the way we handle this
22 is through a confidentiality order that I issue.
23 They're entitled -- you can't have your cake and eat it,
24 too. This can't go into evidence as evidence of some
25 numerical evidence that isn't evident here. If you want

1 to establish that. I'm going to sustain the objection
2 at this point. If you want to offer the unredacted
3 version of this, then I will reconsider this document,
4 and that document can be placed into an envelope that
5 will be marked --

6 MS. HILL: A sealed envelope.

7 JUDGE ROSAS: -- under seal, okay.

8 MS. HILL: Your Honor, if I'm not mistaken, early
9 on in the proceedings, I had asked for some sort of
10 confidentiality regarding the pricing. I think I saw a
11 nodding from one of them.

12 As long as it's going to be under seal and for
13 your eyes only or the Board's eyes and it doesn't go any
14 further than that, you know, we can provide --

15 JUDGE ROSAS: We do it all the time.

16 MS. HILL: Absolutely.

17 JUDGE ROSAS: Okay. So what I'm going to do is
18 I'm going to receive this, let's do it that way, I'm
19 going to receive it conditioned upon the submission into
20 evidence, but to be placed under seal the unredacted
21 version of the rest of Respondent's Exhibit 9, pages
22 three through the end. Okay?

23 MS. HILL: Okay. Your Honor, with respect to --
24 we've discussed the numbers and the confidentiality
25 regarding that. The name of the individual, because you

1 see it's blackened out, it's redacted at "Ordered By,"
2 is there any reason why that has to be redacted -- has
3 to be unredacted? Excuse me.

4 JUDGE ROSAS: Excuse me. You're saying it's
5 what, it's what?

6 MS. HILL: We redacted the name of the individual
7 who ordered it. If you look in the --

8 JUDGE ROSAS: Why is that confidential? That's
9 an employee?

10 MS. HILL: No. It's a customer's name.

11 JUDGE ROSAS: Oh, a customer's name, I see.

12 MS. HILL: Yes, sir.

13 JUDGE ROSAS: Lost revenue by one customer?

14 MS. HILL: Okay. You have the name of the
15 customer, but the individual --

16 JUDGE ROSAS: I'm talking about the very first
17 page.

18 MS. HILL: Oh, the first page. No, no, no. I'm
19 talking about --

20 JUDGE ROSAS: Oh, there's no issue there. I'm
21 sorry. I was on the wrong page.

22 MS. HILL: These are the numbers, yeah, these are
23 the numbers that you said can be under seal.

24 JUDGE ROSAS: No. Well --

25 MS. HILL: Can we leave -- do we have to unredact

1 the name of the --

2 JUDGE ROSAS: I don't think we need --

3 MS. HILL: Thank you.

4 JUDGE ROSAS: -- I don't think we need the names
5 of the customers.

6 MS. HILL: Thank you.

7 JUDGE ROSAS: Just the amounts.

8 MS. HILL: Thank you, sir.

9 MR. WIESE: Your Honor, with respect to page one
10 of the exhibit, are you also ordering an unredacted
11 version of that?

12 JUDGE ROSAS: But you're telling me that you put
13 it into evidence.

14 MR. WIESE: I did, with the understanding that we
15 would be provided information about what had been
16 redacted and that that issue would be --

17 JUDGE ROSAS: Fair enough. Show it to counsel
18 and see if it's worthwhile for anything, if it's
19 something that's relevant. I mean maybe after you show
20 it to them. If it doesn't have to do with revenue
21 itself, it's not a revenue amount, I mean it's not
22 relevant in the ultimate mix, but, you know, if it's --
23 maybe it's something else that's of some importance to
24 you, but -- first show that to counsel, and obviously
25 they're under, you know, a confidentiality order with

1 respect to any of that information as well, to the
2 extent that you show them what that is.

3 MS. HILL: Okay.

4 JUDGE ROSAS: Okay. They're not to divulge that
5 to the client or anything. So the entire document is
6 being received conditionally on counsel being shown the
7 original unredacted version.

8 (Respondent's 9 was received.)

9 JUDGE ROSAS: Okay. Next.

10 MS. HILL: At this point, now that we have that
11 resolved, your Honor, we'll pass the witness.

12 JUDGE ROSAS: Okay. How much cross do you have?

13 MR. WIESE: It looks like about ten minutes or
14 so.

15 JUDGE ROSAS: Okay. Why don't we go ahead.
16 You'd rather get this over with, correct?

17 THE WITNESS: I drove two hours to get here.

18 JUDGE ROSAS: All right.

19 CROSS EXAMINATION

20 BY MR. WIESE:

21 Q Mr. Anderson, so you -- at the time you became
22 the profit center manager of the Franksville facility,
23 Local 139 already represented the mechanics and drivers
24 at that facility, is that correct?

25 A Yes.

1 Q You testified about something called a pro forma.
2 Do you recall talking about that?

3 A Yeah.

4 Q And this was something that was put together by
5 Mr. Bogardus, is that --

6 A Atwell.

7 Q Dan Atwell?

8 A Dan Atwell. He's our director of operations.

9 Q Is that a written document?

10 A It was a spreadsheet.

11 Q And when were you provided this?

12 A At some point -- I believe it was in May of 2018.

13 Q Does that document still exist?

14 A Yes. I don't have a copy of it, but Mr. Bogardus
15 has a copy of it. I never was provided a copy of it.
16 We had a meeting where it was -- they presented it to
17 me, but I never actually had a copy of it.

18 Q And that meeting was in about May of 2018, is
19 that -- does that sound about right?

20 A Yeah.

21 Q Okay. And the pro forma plan that was presented
22 in May of 2018, was that focused solely on the
23 Franksville facility?

24 A Yes.

25 Q You also talked a little bit about preparing

1 budgets for fiscal years. Do you recall that testimony?

2 A Yeah, uh-huh.

3 Q So you prepared the budget for fiscal year 2019
4 which went from May 1st of 2018 to April 31st of 2019.
5 Does that sound right?

6 JUDGE ROSAS: It would be April 30.

7 BY MR. WIESE:

8 Q Yeah, I may have misspoken. April 30th of 2019?

9 A That's correct.

10 Q What about the fiscal year 2020 budget that went
11 from May 1st of 2019, the currently ongoing April 30th
12 of 2020, were you involved in creating that budget?

13 A I was only ever involved in preparing one budget
14 during my tenure at -- I may be getting my years messed
15 up because it's very confusing when you're dealing with
16 fiscal years versus calendar years. In fact, I wish we
17 ran on a calendar year, but we don't, but I've only ever
18 prepared one budget.

19 Q Do you recall when you started -- when you became
20 the profit center manager at the Franksville facility?

21 A May of 2018.

22 Q So with respect to the reorganization at the
23 Franksville facility, you testified that you found out
24 about that through a conversation with Mr. Mayfield, is
25 that correct?

1 A That's correct.

2 Q And Mr. Mayfield told you that employees would be
3 laid off as part of that reorganization?

4 A Yes.

5 Q And Mr. Mayfield -- you had that conversation
6 with Mr. Mayfield before the August 8th, 2018 bargaining
7 session -- 2019?

8 A Yes. He mentioned it when he got there,
9 obviously behind closed doors.

10 Q You talked about the Franksville facility being
11 under budget. Do you recall that testimony?

12 A Under budget, yes.

13 Q Okay. And that would be reflected in documents
14 kept by Sunbelt?

15 A Yes.

16 Q Like a Consolidated Income Statement, would that
17 contain that information?

18 A Sure, yes.

19 Q Is that the primary place where that information
20 would be kept?

21 A Not typically. It would be reflected on our
22 monthly financial statements. We had our finance
23 department put this document together to simplify the
24 data.

25 Q When you say "this document," which document?

1 A This Consolidated Income Statement. He compiled
2 it all into one document to make it very easy to
3 identify the missing of the budget.

4 Q And when you say "he," who are you talking about?

5 A I believe it was prepared by a gentleman by the
6 name of Luke Barclay who is our region finance manager.

7 MR. WIESE: Nothing further.

8 JUDGE ROSAS: Charging Party?

9 MR. RYAN: Just a couple questions.

10 CROSS EXAMINATION

11 BY MR. RYAN:

12 Q Mr. Anderson, you mentioned Dodge Reports --

13 A Yes.

14 Q -- are used in the budget?

15 A Yep.

16 Q Do you know what the Dodge Reports are saying
17 about the construction market since the reorganization?

18 A The Franksville market is thriving. It's a very
19 hot market if you will.

20 Q You also talked about some of the costs of using
21 outside haulers?

22 A Uh-huh.

23 Q I think you mentioned after you came in, you were
24 spending 15 to 20,000 a month on outside haulers?

25 A Roughly.

1 Q Did that number stay fairly consistent through
2 August of 2019?

3 A Yes.

4 Q And then you mentioned the discharge of
5 Mr. Gutierrez. Do you know, did the union take any
6 action in response to this charge?

7 A Did they --

8 MS. HILL: Yeah, objection.

9 JUDGE ROSAS: What's the basis?

10 MS. HILL: The form, action. Maybe define it for
11 him.

12 JUDGE ROSAS: Yeah, if you know.

13 THE WITNESS: Did they take any action?

14 JUDGE ROSAS: Do you understand or --

15 THE WITNESS: I don't understand.

16 JUDGE ROSAS: Okay. Rephrase.

17 BY MR. RYAN:

18 Q Do you know if the union filed an unfair labor
19 practice charge over his discharge?

20 A I believe they did.

21 MR. RYAN: I don't have anything further. Thank
22 you.

23 JUDGE ROSAS: Any redirect?

24 MS. HILL: Yes, sir.

25 ///

REDIRECT EXAMINATION

BY MS. HILL:

Q Mr. Anderson, you lifted a document. Is there an exhibit number to it?

A Yes. It's GCX 30.

Q Thank you. I saw it flash, I didn't know what it was, so thank you.

JUDGE ROSAS: And that was the document relating to --

THE WITNESS: Consolidated Income Statement Trend.

JUDGE ROSAS: Okay.

BY MS. HILL:

Q And you indicated that the monthly outside hauler fees remained consistent through 2019, correct?

A Yes.

Q And what did you attribute that to?

A Well, there was -- there was times when we would send our driver home for the day, and then orders would come up after the fact once he had gone home, so we contacted the outside hauler to make the deliveries for us.

Q Did you ever try to get -- when you refer to the driver, who are you referring to?

A Jamie Smith.

1 Q Did you ever contact Mr. Smith to get him to come
2 back?

3 A I did not.

4 Q And why is that?

5 A Because Mr. Smith was the kind of person that did
6 not want to work. He basically -- if you ever asked him
7 if he wanted to work overtime, he would say no. He
8 would gripe about having to do the runs that he was
9 assigned. And quite frankly, it was just easier to
10 contact an outside hauler.

11 Q You indicated that sometimes a customer would
12 call after Mr. Smith would go home. How much of
13 Sunbelt's -- how much advanced notice do you have, on
14 average, for -- just a moment -- for responding to a
15 customer's request for equipment?

16 A Above 80 percent of our orders at Sunbelt Rentals
17 come in with less than 24-hours notice, so I would say a
18 very, very large amount of orders would be customers
19 calling in saying I need it right now or I need it very
20 soon. Does that answer the question?

21 MS. HILL: That answered the question. Thank you
22 very much, sir. No further questions.

23 JUDGE ROSAS: Any follow-up?

24 MR. WIESE: No, your Honor.

25 JUDGE ROSAS: Charging Party, anything?

1 MR. RYAN: No, your Honor.

2 JUDGE ROSAS: Thank you, sir. You're excused.

3 Please do not discuss your testimony with anyone until
4 you're advised by counsel that the case is over. All
5 right?

6 THE WITNESS: Okay.

7 JUDGE ROSAS: Thank you. Have a good night.

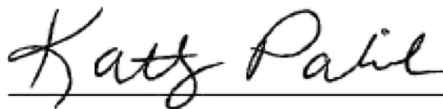
8 MS. HILL: Your Honor, there was an issue getting
9 back in to the witness room. He left his personal
10 effects in there.

11 JUDGE ROSAS: We're off the record.

12 (End of proceedings at 5:12 p.m.)
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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 18, Subregion 30, in the matter of SUNBELT RENTALS, INC., Case Nos. 18-CA-236643, 18-CA-238989 and 18-CA-247528, at Milwaukee, Wisconsin, on February 18, 2020 was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

A handwritten signature in black ink, reading "Kathy Pabich", is written over a horizontal line.

KATHY P. PABICH, CSR

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**Case No.: 18-CA-236643
18-CA-238989
18-CA-247528**

SUNBELT RENTALS, INC.

Respondent

And

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 139,
AFL-CIO**

Charging Party

**Place: Milwaukee, WI
Date: 02/19/20
Pages: 1090-1301
Volume: 5**

OFFICIAL REPORTERS

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1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 18 - SUBREGION 30
4

5 In the Matter of: |

6 SUNBELT RENTALS, INC., |

7 Respondent, |

8 and |

Case Nos.: 18-CA-236643

9 INTERNATIONAL UNION OF |

18-CA-238989

10 OPERATING ENGINEERS LOCAL 139, |

18-CA-247528

11 AFL-CIO, |

12 Charging Party. |

13
14
15
16
17
18 The above-entitled matter came on for hearing
19 pursuant to notice, before ADMINISTRATIVE LAW JUDGE
20 MICHAEL ROSAS, at the National Labor Relations Board,
21 Subregion 30, 310 West Wisconsin Avenue, Suite 450W,
22 Milwaukee, Wisconsin, on Wednesday, February 19, 2020,
23 at 8:33 a.m.
24
25

A P P E A R A N C E S

On behalf of the General Counsel:

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Also Present:

MICHAEL ERVIN
Union organizer

I N D E X

		DX	CX	RDX	RCX	VOIR DIRE
3	RESPONDENT WITNESSES:					
5	ROBERT RIVERA	1093	1121 1129	1131	1133	--
6	REBEL STROHMEYER	1134	1149 1150	--	--	--
8	CHRISTOPHER PENDER	1152	1161	--	--	--
9	MARIANO RIVERA	1171	1189 1194	--	--	--
10	STEVEN BUFFALO	1199	--	--	--	--
11	DANIEL MARSOLEK	1270	--	--	--	--

E X H I B I T S

EXHIBIT	FOR IDENTIFICATION	IN EVIDENCE
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GENERAL COUNSEL

1(LL)	1281	1281
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RESPONDENT

R 11	1139	1148
R 40	1199	1202

P R O C E E D I N G S

(Time Noted: 8:33 a.m.)

JUDGE ROSAS: Next witness. On the record.

MS. HILL: Robert Rivera, sir.

(Whereupon,

ROBERT RIVERA,

was called as a witness by and on behalf of the
Respondent and, after having been duly sworn, was
examined and testified as follows:)

JUDGE ROSAS: Please have a seat. Please state
your name and provide us with an address.

THE WITNESS: Yes. Robert Rivera. And the
address is W231 N1125 County Highway F, as in Frank,
Waukesha, Wisconsin, 53186.

DIRECT EXAMINATION

BY MS. HILL:

Q Mr. Rivera, who is your employer, sir?

A Sunbelt Rentals.

Q Since when have you worked for Sunbelt?

A August of 2014.

Q What positions have you held, sir, with Sunbelt?

A Outside sales representative and profit center
manager.

Q When did you become a profit center manager?

A Approximately one year after I started.

1 Q About 2015?

2 A Correct.

3 Q Which location were you assigned to as a profit
4 center manager when you started?

5 A Waukesha.

6 Q And which division are you in?

7 A General Tools.

8 Q Do you currently hold the position of profit
9 center manager?

10 A Yes, I do.

11 Q What is the territory for your -- currently for
12 your Waukesha profit center?

13 A The south side of Milwaukee to Port Washington,
14 and from the lakefront to the Whitewater area.

15 Q Are you familiar with the Franksville profit
16 center?

17 A Yes.

18 Q And how are you familiar with it?

19 A I'm the profit center manager for that location
20 as well.

21 Q So you're handling two profit centers at the same
22 time?

23 A Correct.

24 Q When did you become the profit center manager for
25 Franksville?

1 A In August of 2019.

2 Q Does your Waukesha profit center, does its
3 territory also include Franksville's territory?

4 A No. We have separate territories.

5 Q Are you familiar with the reorganization of the
6 Franksville profit center?

7 A Yes.

8 Q How did you learn about it?

9 A I was notified by Jason Mayfield.

10 Q And what did Mr. Mayfield tell you?

11 A He told me that we are going to reorganize that
12 location and asked me to be the profit center manager
13 for that location as well.

14 Q Did he give you any specifics about how it was
15 going to be reorganized?

16 A Yeah. He says -- he said because of the volume
17 of that store has such high cash transactions anyway,
18 that we're going to basically be more or less like a
19 satellite location.

20 Q Approximately when did Mr. Jason have --
21 Mr. Mayfield have this conversation with you?

22 A It was in August.

23 Q Do you know Mario Rivera?

24 A Yes.

25 Q And who is he?

1 A He is my brother.

2 Q Are you aware of where -- who does Mr. Mario
3 Rivera work for?

4 A He works for Bo Bogardus at the Climate Control
5 Division.

6 Q And do you know when he started working for
7 Climate Control?

8 A I'm honestly not sure of the date.

9 Q Did he work for any other division for Sunbelt?

10 A He was with General Tools, Racine, Franksville.

11 Q Do you know how Mario was able to get transferred
12 to Climate Control?

13 A He worked for a few years with Bo Bogardus when
14 Bo was the district manager for our General Tools, so he
15 knew him from prior, and the position was open, so I
16 would speculate that's how he applied for it.

17 Q Well, we don't want you to speculate, but did you
18 have -- did you help Mario in any way to get that
19 transfer to Climate Control?

20 A No. I have no dealings with Climate Control.

21 Q When did you hear about Mario's transfer to
22 Climate Control?

23 A It would have been in August, because he was no
24 longer at that -- in Franksville when I got there.

25 Q How many days per week do you physically work in

1 the Franksville location?

2 A One to two days basically.

3 Q And then the rest of the time you're physically
4 at the Waukesha profit center?

5 A Correct.

6 Q Does the Franksville profit center currently have
7 a shop foreman?

8 A No. They have a service manager.

9 Q What are the job responsibilities for a service
10 manager?

11 A To do the administrative work, filing warranties,
12 doing work orders, billing customer damage, ordering
13 parts, checking in equipment.

14 Q And when you say "checking in equipment," what
15 does that entail?

16 A When rental equipment is returned by a customer
17 or transferred from a different location, just to make
18 sure everything is in safe operating conditions.

19 Q Does it ever require when a piece of equipment is
20 returned, that it has to be cleaned?

21 A Yes.

22 Q All right. Are there any actual tests that a
23 service manager would do on a piece of equipment that
24 would come into the shop after a rent?

25 A We have what's called SMF, a safety data sheet.

1 They go through the checked box and make sure each piece
2 is safe and operating before the next rental.

3 Q And do you have a service manager at your
4 location, sir?

5 A Yes, I do.

6 Q In Waukesha?

7 A Yes.

8 Q Okay. And do the job responsibilities for the
9 two locations for a service manager differ?

10 A Not really, no.

11 Q Does the service manager in Waukesha ever have to
12 clean, you know, wash up a piece of equipment that's
13 been returned?

14 A Yes.

15 Q And does that happen also in Franksville?

16 A Yes.

17 Q And did that happen before the reorganization of
18 Franksville, if you know?

19 A It happens everywhere.

20 Q When you've worked for Sunbelt, did you work
21 anywhere else for Sunbelt other than in Wisconsin?

22 A Yes. Coral Springs, Florida.

23 Q And what position did you have there, sir?

24 A Profit center manager.

25 Q Does the Waukesha profit center have walk-in

1 customers?

2 A Waukesha, yes.

3 Q Do you have any idea what percentage of their
4 customers?

5 A Very minimal. 20, 25 percent.

6 Q How does that compare to the Franksville
7 location?

8 A The Franksville location is high cash
9 transactions which is, I would say, over 60 to 70
10 percent.

11 Q When you were the profit center manager just for
12 the Waukesha profit center, did you deliver equipment?

13 A Yes.

14 Q What type of equipment?

15 A Small equipment.

16 Q How would you define small equipment?

17 A Anything that I can put in the back of a pickup
18 truck or tow on my hitch.

19 Q And the weight on something like that, sir?

20 A It would have to be under 10,000 pounds.

21 Q And as the, I guess you would say, part-time
22 profit center manager for the Franksville location, have
23 you had to deliver any equipment from that location?

24 A Yes.

25 Q And what type of equipment?

1 A Small, small items that can fit on the back of my
2 truck, I guess.

3 Q For the -- what positions at the Franksville
4 location report to you?

5 A All of the positions.

6 Q And those are?

7 A The ERS, equipment rental specialist, OSRs,
8 outside sales representatives, operational manager, and
9 the service manager.

10 Q Do your outside sales representatives for the
11 Franksville profit center deliver equipment?

12 A Yes.

13 Q And again, what type?

14 A The same as I do.

15 Q Do you know Chris Pender?

16 A Yes.

17 Q And what position does Mr. Pender currently have?

18 A He is a shop mechanic at the Waukesha location.

19 Q Prior to working as a shop mechanic at the
20 Waukesha location, where did he work?

21 A Franksville service manager.

22 Q Did you ever hear Mr. Pender make any comments
23 about the union never getting into the Franksville
24 location?

25 A No, ma'am.

1 Q Were you aware that Sunbelt and Local 139 were
2 engaged in negotiating a labor contract?

3 A Yes.

4 Q Did anyone at Sunbelt tell you that Sunbelt was
5 not going to reach an agreement with the 139?

6 A No, ma'am.

7 Q Now, you mentioned that you have an operations
8 manager for the Franksville location. Whose decision
9 was it to have an operations manager?

10 A That was a discussion that Jason Mayfield, my
11 boss, and myself had in order to keep me to be able to
12 keep focus on Waukesha, so assist me at that location,
13 so we came up with a right-hand man, an operational
14 position, assistant manager.

15 Q Do you have an operations manager for your
16 Waukesha location?

17 A No, I do not.

18 Q Sir, what is the weight of a skid-steer?

19 A 8 to 9,000 pounds.

20 Q And what is a weight of a track skid loader?

21 A Roughly the same, 8 to 9,000 pounds.

22 Q Does the Franksville location have a road
23 technician?

24 A No, it does not.

25 Q Does your Waukesha location have one?

1 A Yes, they do.

2 Q Do you have one or more than one?

3 A I have three.

4 Q And when did you hire each of those road
5 technicians?

6 A The first was 2015. The second one was
7 roughly -- that was 2015. And the last one was January
8 of 2020.

9 Q How did you go about acquiring a third road tech
10 in January of 2020?

11 A We posted the position internally and externally
12 and did interviews.

13 Q Where was this job posting externally?

14 A To my knowledge, Indeed and various other,
15 LinkedIn.

16 Q And when you post -- since you've been the profit
17 center manager for the Waukesha location, have you had
18 to post externally for jobs other than just this road
19 tech?

20 A Yes. The process has been the same since I
21 started five years ago.

22 Q So for five years, anytime you need a new job to
23 be filled, you would post it internally and on the same
24 external sites, correct?

25 A Correct.

1 Q Do you know Kyle McKellips?

2 A Kyle McKellips, a mechanic for Racine, yes.

3 Q Okay. And how many external candidates applied
4 for the job as the road tech?

5 A At least a half a dozen.

6 Q Was Mr. McKellips one of them?

7 A No, not to my knowledge.

8 Q Did an Al Romanowski apply for the road tech
9 position that was posted and you filled in January of
10 2020?

11 A No, he did not.

12 Q The candidate who was ultimately hired in January
13 of 2020, was he an internal or external candidate?

14 A External.

15 Q Sir, you have two binders in front of you. I
16 would like you to please open the blue binder, and
17 you'll see tabs on the side. They're numbered. Would
18 you please go to 25.

19 JUDGE ROSAS: General Counsel's 25.

20 THE WITNESS: Page 1.

21 BY MS. HILL:

22 Q For 25, do you see a series of pictures, sir,
23 colored photographs?

24 A Yes, I do.

25 Q All right. Now, you're going to see -- in the

1 bottom middle of the page, you'll see GCX 25, then over
2 to the right of that, you'll see in white, it says Page
3 1 of 45.

4 A Yes.

5 Q I'm going to be referring to certain pages by the
6 numbers over on that right side. Okay?

7 A All right.

8 Q All right. Let's start on Page 1, sir. What
9 pieces of equipment do you see in that photograph?

10 A I see a track skid-steer and an air compressor.

11 Q Now, you've already identified the weight for the
12 track skid-steer. What is the weight for that
13 particular air compressor, if you know, sir?

14 A It would have to be around 2500 pounds.

15 Q I'm sorry, one more time, I couldn't --

16 A About 2500 pounds. It looks like a 260 air
17 compressor.

18 Q Thank you. If you would please go to Page 5.

19 A Okay.

20 Q Do you see any equipment there?

21 A There's something on the upper deck. I don't
22 know what that is.

23 Q Would you please turn to Page 6. What do you see
24 there, sir?

25 A A service truck.

1 Q And do you recognize where this service truck is
2 located?

3 A In this picture?

4 Q In this picture.

5 A It looks like it's outside one of the bays near
6 the front gate.

7 Q Of which profit center?

8 A Racine, 776.

9 Q Now, is this service truck assigned to Racine
10 currently?

11 A No, it is not.

12 Q Where is it assigned to?

13 A Waukesha.

14 Q Do you know when it was assigned to Waukesha?

15 A It would have been September, October time frame.

16 Q Thank you. If you would please turn to Page 7,
17 sir. There seems to be a Sunbelt truck there, correct?

18 A Yes.

19 Q Can you identify the piece of equipment on the
20 flatbed of the truck?

21 A That is a micro backhoe.

22 Q Do you know the weight for that piece of
23 equipment, sir?

24 A Roughly 2,000 pounds.

25 Q Which profit center, if you know, is this piece

1 of equipment assigned to?

2 A It's Waukesha.

3 Q And would this be a piece of equipment that would
4 be considered a small, small equipment?

5 A Yes.

6 Q Now, if you would please turn to Page 9, sir.
7 Can you identify the pieces of equipment on that flatbed
8 there, sir.

9 A A micro backhoe. Some skid-steer tires. It
10 looks to be a one-ton micro roller. That's all I can
11 make out.

12 Q Any of the pieces of equipment on -- you said one
13 piece was one ton, so 2,000 pounds?

14 A Correct.

15 Q And you already identified the weight for the
16 micro backhoe.

17 The tires, how much would they weigh, if you
18 know?

19 A Roughly, if there's four on there, maybe, you
20 know, 5, 600 pounds.

21 Q So would the total weight of all of the equipment
22 on this vehicle be less than 10,000 pounds?

23 A Yes, ma'am.

24 Q All right. If you would please look at Page 10.
25 Is that a Sunbelt truck, sir?

1 A No, it is not.

2 Q Can you determine whose vehicle that is?

3 A That's a Paccar from Ryan Enterprise.

4 Q You said Ryan Enterprise?

5 A Correct.

6 Q What piece of -- or pieces of equipment do you
7 see on this vehicle?

8 A A small -- a small boom lift, two scissor lifts
9 and a roller.

10 Q Any of this equipment, to the best of your
11 knowledge, assigned to the Franksville location?

12 A Without looking at the asset numbers, I can't
13 tell you.

14 Q Are there any booms at the Racine location?

15 A No, ma'am.

16 Q Page 11, sir. What pieces of equipment do you
17 see here, sir?

18 A From left to right, I see a small Genie lift, a
19 yellow hybrid scissor lift, a walk-behind trencher, air
20 compressor, it looks like a walk-behind rototiller.
21 That's good.

22 Q That red piece of equipment near the orange
23 cones, what is that, sir?

24 A It looks like a walk-behind either rototiller or
25 like Harley rig.

1 Q You mentioned a yellow hybrid, is that correct?
2 Is that what you called one of those pieces?

3 A Yes, in the left bay.

4 Q And why isn't that piece of equipment green?

5 A Because hybrid -- we have several hundred pieces
6 of hybrid that are still factory color from the
7 acquisition of Milwaukee High Lift.

8 Q That walk-behind I believe you said tiller, the
9 red piece of equipment --

10 A Correct.

11 Q -- why isn't that green, sir?

12 A That's factory color. That's how -- that's how
13 we order it. That's how it comes.

14 Q And that's how it stays?

15 A Correct.

16 Q Are any of the pieces of equipment that you
17 identified in this photograph, sir, do they weigh in
18 excess of 10,000 pounds?

19 A Definitely not.

20 Q If you would please turn to Page 14, sir.

21 A Okay.

22 Q What equipment do you see in this photograph,
23 sir?

24 A On the left is a zero-turn Toro lawnmower and a
25 Vemeer wood chipper.

1 Q Now, this lawnmower appears to be bigger than the
2 last one you identified. Does this one weigh more than
3 10,000 pounds?

4 A No. About 2500 pounds, 2,000 pounds.

5 Q And the wood chipper, how much does that weigh?

6 A It looks to be roughly a nine-inch chipper. I
7 would say probably 6,000, 7,000 pounds.

8 Q Page 15, sir. All right. There appears to be at
9 least two vehicles there, sir. It looks like a trailer
10 on the far right, and then there's a white vehicle. Do
11 you recognize the white pickup truck?

12 A It looks like my operations manager's truck for
13 Racine.

14 Q What is that piece of green equipment on the
15 trailer, sir, behind the white truck?

16 A That's a Tennent T20 super scrubber.

17 Q How much does that piece of equipment weigh, sir?

18 A It's made out of plastic, so 2,000 pounds.

19 Q Page 16, sir. What is that piece of equipment,
20 sir?

21 A That looks to be an AWP-30S.

22 Q Can you recognize which profit center this is at?

23 A That looks like the south door of the Racine
24 location.

25 Q And can you determine what is being done to this

1 piece of equipment?

2 A Not exactly.

3 Q Okay. And do you know the approximate weight for
4 this piece of equipment?

5 A 15 -- it would be like 1,000 pounds.

6 Q And do you recognize -- I realize it's not a very
7 flattering picture of the individual there. Do you
8 recognize the person there, sir?

9 A I can't. There's no face. I can just see a hat.

10 Q Page 23, sir.

11 A Okay.

12 Q What is the piece of equipment connected to the
13 white pickup truck?

14 A That is a light tower.

15 Q How much does that weigh?

16 A Around 2500 pounds.

17 Q Do you recognize the white truck that is pulling
18 it?

19 A It looks like my outside sales rep, Tyler, his
20 truck.

21 Q All right. Page 24. Do you see a -- in the
22 foreground, do you see a piece of equipment there, sir?

23 A That's that zero-turn Toro lawnmower.

24 Q You can see some green it looks like through an
25 open door behind it. Can you determine what that is,

1 sir?

2 A No, I cannot. It has a Wacker symbol on it,
3 that's it.

4 Q If you would turn to Page 25, please. I'll try
5 starting by color. The orange piece of equipment, what
6 is that?

7 A That's a backhoe loader.

8 Q And why is this piece of equipment -- it looks
9 like it's not on a truck or anything, it's just sitting
10 there on the ground. Why is it there?

11 A That's a -- I asked the same question when I got
12 there, and it was a customer purchased it and staged
13 there waiting for them to set up trucking.

14 Q How long did it take until the customer picked it
15 up?

16 A Looking at the time of the picture, it was August
17 28th -- I'm sorry, October 28th, and I started in August
18 there, so several months.

19 Q But eventually did the customer pick it up?

20 A Yes, ma'am.

21 Q And did the customer arrange for the hauling of
22 it?

23 A Correct.

24 Q Any of the other green pieces of equipment that
25 you see, and there appears to be a Chrome-colored one in

1 front, a trailer, actually two of them there, any of
2 those pieces of equipment 10,000 pounds or more, sir?

3 A No, ma'am.

4 Q Page 26, sir. What pieces of green equipment do
5 you see there, sir?

6 A I see two -- two skid loaders there.

7 Q How much do they weigh, if you know, sir?

8 A Approximately 8 to 9,000 pounds.

9 Q The piece of equipment that's black and has
10 "Deere" on it, what is that?

11 A It's a mini excavator.

12 Q Any idea how much that weighs, sir?

13 A No. I cannot see a model. I do not know.

14 Q Page 20 -- let's see, that would be Page -- I'm
15 going over some of these, your Honor, and I'm trying not
16 to be cumulative on this, your Honor.

17 29, what pieces of equipment do you see here,
18 sir?

19 A I see a rough-terrain forklift, and on the left,
20 an aerial tow-behind boom, possibly two of them, a Deere
21 mini excavator, and a Bobcat mini excavator.

22 Q All of these pieces of equipment 10,000 pounds or
23 less, sir?

24 A No.

25 Q Okay. Which one isn't?

1 A The rough-terrain forklift would be heavier than
2 that.

3 Q And why is that one there, sir?

4 A To my knowledge, it was a customer pickup and
5 return that they did themselves.

6 Q So they dropped it off there?

7 A Correct.

8 Q And did that rough-terrain piece of equipment
9 stay there or did it go someplace else?

10 A No. It has to leave there. It's not allowed
11 there.

12 Q Page 30, sir. And in fact 30, 31 and 32, do they
13 appear to be the same piece of equipment?

14 A Yes. Different angles.

15 Q What is this equipment on the trailer?

16 A The scissor lift is in the back and then a boom,
17 aerial boom in the front.

18 Q Is that a Sunbelt truck that's hauling it?

19 A No. That's Putter's Trucking.

20 Q That's an outside hauler?

21 A Yes, ma'am.

22 Q Do you know which profit center this -- these
23 three photographs are of?

24 A Where this is located?

25 Q Yes.

1 A Franksville.

2 Q So why is Putter picking up this equipment or
3 dropping it off?

4 MR. WIESE: Objection, speculation.

5 BY MS. HILL:

6 Q If you know.

7 JUDGE ROSAS: If you know.

8 BY MS. HILL:

9 Q Yeah.

10 A Not offhand.

11 Q Okay. Page 33, sir. What pieces of equipment do
12 you see here, sir?

13 A There's a Cushman cart, a --

14 Q Is that the white one on the left?

15 A Correct, from left to right.

16 Q Okay. Why isn't that one green?

17 A It's a Cushman color. It could be yellow. It
18 could be white. To my knowledge, I'm not even sure if
19 we have any green ones that we own.

20 JUDGE ROSAS: Cushman what?

21 THE WITNESS: Cart.

22 BY MS. HILL:

23 Q And continue on. I'm sorry.

24 A And then a stump grinder, a Toro Dingo, a small
25 tilt trailer, another stump grinder, on the ground and

1 one on the trailer, a chipper, wood chipper, and a
2 roller.

3 Q That roller on the far right, how much does that
4 weigh?

5 A That would be --

6 Q If you know.

7 A Not exactly.

8 Q All right. Let's go to Page 35, sir. There
9 appears to be a piece of orange equipment there, and
10 what is that?

11 A That is a 260 Sullivan compressor.

12 Q How much does that weigh, sir?

13 A 2600 pounds.

14 Q Over to the far left, there appears to be it
15 looks like some sort of scoop. What is that, sir?

16 A That is a power buggy.

17 Q And how much does that weigh, sir, if you know?

18 A Roughly about 1,000 pounds.

19 Q Any of the pieces of equipment that you see here,
20 sir, if you know, do they weigh more than 10,000 pounds?

21 A The ones I can identify, no.

22 Q All right. I think that should do it for the
23 equipment photographs, sir. You can close up that
24 binder, please.

25 Do you know a company by the name of Pirtek,

1 P-I-R-T-E-K?

2 A Yes, ma'am.

3 Q And what is that?

4 A That's a repair shop that we use.

5 Q When you say "we use," which profit center?

6 A Most of them, Waukesha, Fond du Lac, Franksville,
7 I believe Wausau all use them.

8 Q Since when?

9 A Four, five years.

10 Q What does Pirtek do for those locations?

11 A They repair mainly hydraulic hoses and cylinders.

12 Q So something that some of the equipment uses?

13 A Correct.

14 Q All right. With respect to the customers for the
15 Franksville location, are you familiar with the customer
16 base for that location?

17 A Will you rephrase the question.

18 Q Okay. You have OSRs at that location, correct?

19 A Yes.

20 Q Those OSRs call on customers --

21 A Correct.

22 Q -- out in the field, correct?

23 A Yes.

24 Q Sometimes referred to as the OSRs kicking the
25 dirt to bring in the business?

1 MR. WIESE: Objection, leading.

2 JUDGE ROSAS: Sustained. Stricken.

3 BY MS. HILL:

4 Q With respect to those OSRs, are you familiar with
5 the customers that they call on?

6 A Yes.

7 Q Have any of the customers that have been called
8 on at the Franksville location, have they stopped doing
9 business with Sunbelt at that location?

10 A Yes.

11 Q For your Waukesha profit center, are you aware of
12 any customers that your location has lost?

13 A Yes.

14 Q Do you know how it came about that the customers
15 were lost at your Waukesha location?

16 A The customers notified my outside sales reps and
17 they've also said to myself either through a caller
18 saying they don't want to be harassed with the
19 inflatables and the signs and the picketers, so until we
20 get things resolved, they're not going to do business
21 with us.

22 Q Have you attempted to regain the business from
23 those customers?

24 A No.

25 Q For the -- and I'm referring first to the

1 Waukesha location. Have you tried or requested your
2 staff to try to recover the business from the
3 Franksville location?

4 A Yes.

5 Q Have they been successful?

6 A No.

7 Q What have you requested -- what methods have you
8 suggested to your OSRs to try to recover the lost
9 customers?

10 A Calling customers. Just think outside the box.

11 Q Just keep contacting the customers?

12 A Correct.

13 Q All right. Gary Stamm, do you know him?

14 A Yes.

15 Q What position does he hold?

16 A Equipment rental specialist.

17 Q At which location?

18 A Franksville.

19 Q So basically at Franksville he is behind the
20 counter?

21 MR. WIESE: Objection, leading.

22 JUDGE ROSAS: I'll allow that.

23 THE WITNESS: Yes.

24 BY MS. HILL:

25 Q Does Mr. Stamm have any other responsibilities

1 other than working at the counter?

2 A He washes equipment, checks in equipment, handles
3 the outside hauler, dispatching.

4 Q And you indicated you have ERS's at your Waukesha
5 location, too?

6 A Correct.

7 Q Do your ERS's at the Waukesha location do
8 anything different from what Mr. Stamm does?

9 A They do exactly the same thing.

10 Q Are you familiar with United Rentals?

11 A Yes.

12 Q Are you familiar with NES?

13 A I knew of them.

14 Q Was there an NES location in Wisconsin?

15 A On the north side of Milwaukee.

16 Q And is that NES location still in existence?

17 A No, it is not.

18 Q And what happened to it?

19 A It got purchased by United Rentals.

20 Q And then what happened?

21 A They closed the location down.

22 Q And do you know why it was closed down?

23 MR. WIESE: Objection, relevance.

24 MS. HILL: To show a little bit of why the 139
25 has been sending the work -- the business over to

1 United.

2 JUDGE ROSAS: Okay. All right. All right. We
3 know where you're going with it.

4 MS. HILL: Yep.

5 JUDGE ROSAS: And you're talking about what time
6 period?

7 MS. HILL: I can ask what time period that was.

8 JUDGE ROSAS: All right. Go ahead.

9 BY MS. HILL:

10 Q All right. Do you recall when United purchased
11 NES?

12 A It would have been roughly five, five years ago.

13 Q And how long after the purchase did United close
14 it down?

15 A Shortly after that, four or five years ago.

16 Q Was that a unionized facility?

17 A To my knowledge, yes.

18 Q Do you know which union?

19 A (Shakes head.)

20 MR. WIESE: Objection, relevance.

21 JUDGE ROSAS: I'll allow it.

22 MS. HILL: Well, he just answered it.

23 JUDGE ROSAS: You don't know?

24 THE WITNESS: No, I do not know.

25 MS. HILL: Okay. No further questions at this

1 time. I pass the witness.

2 JUDGE ROSAS: Cross?

3 MR. WIESE: Five minutes, please.

4 JUDGE ROSAS: Sure. Off the record.

5 (Recess.)

6 JUDGE ROSAS: All right. Back on the record.

7 Are you ready, General Counsel?

8 MR. WIESE: Yes, yes, I am. Thank you.

9 CROSS EXAMINATION

10 BY MR. WIESE:

11 Q Good morning, Mr. Rivera. My name is Tyler
12 Wiese. I'm the attorney with the NLRB. I'm going to be
13 asking you a couple of questions today. Okay?

14 A All right.

15 Q Did you speak with anyone besides Ms. Hill in
16 preparation for your testimony today?

17 A No, sir.

18 Q Did you review any documents in preparation for
19 your testimony today?

20 A Documents, no.

21 Q Did you review any transcripts?

22 A No.

23 Q With respect to the territories of the stores
24 that we talked about, the Franksville and Waukesha
25 territories or stores, who covers the southern portion

1 of Milwaukee, the area south of Milwaukee down to
2 Illinois?

3 A That's Franksville.

4 Q And what about if there is large equipment that
5 needs to go to that territory, who covers that?

6 A Whatever location has the equipment available.

7 Q And that would include the Waukesha store?

8 A Mostly Waukesha and Sun Prairie.

9 Q And those would be other Sunbelt stores, correct?

10 A Correct.

11 Q There's no union employees at either one of those
12 stores?

13 A No, sir.

14 Q Are you familiar with any other profit center
15 managers who cover two Sunbelt stores?

16 A I'm told -- this came up for conversation.
17 Michigan has one. I believe Ohio has one. There are
18 various in parts of the country.

19 Q You mentioned that you had a discussion with
20 Jason Mayfield about hiring an operations manager at the
21 Franksville location. Do you recall that testimony?

22 A Yes, yes.

23 Q Okay. When did you have that discussion with
24 Mr. Mayfield?

25 A It was the early part of August.

1 Q Did Local 139 come up at any point during that
2 discussion?

3 A No. It was just about operating the store.

4 Q What was that?

5 A It was just about operating the store.

6 Q Okay. Who is the current service manager at the
7 Franksville location?

8 A John Sheridan.

9 Q When did Mr. Sheridan start?

10 A That position or with Sunbelt?

11 Q With that position.

12 A To the best my memory here, maybe December.

13 Q December of what year?

14 A 2019.

15 MS. HILL: May I interrupt for a moment. I hear
16 some noise out here. It may be my witnesses. I want to
17 put them in the room, please.

18 (Pause in the proceedings.)

19 BY MR. WIESE:

20 Q Prior to the current service manager, the prior
21 manager was an individual named Chris Pender, is that
22 correct, at Franksville?

23 A Yes, sir.

24 Q When did Mr. Pender's tenure at Franksville end?

25 A When John started. It was a switch.

1 Q Did you terminate Mr. Pender?

2 A No, sir.

3 Q He resigned, is that right?

4 A He transferred to Waukesha.

5 Q Did you have any conversations with Mr. Pender
6 about why he was transferring to Waukesha?

7 A I spoke to him about performance.

8 Q Did he mention anything to you about how many
9 hours he was having to work at the Franksville store?

10 A No.

11 Q Are you aware of how many hours he was having to
12 work at the Franksville store?

13 A He was salaried. He had no set hours.

14 Q I understand that, but are you aware of how many
15 hours he was having to work at the Franksville store as
16 a service manager?

17 A To my knowledge, between 8:30, quarter to 9:00,
18 so roughly 4:00, 4:30.

19 Q How did you track that?

20 A Through asking employees and being there visually
21 seeing it.

22 Q So you mentioned that the Waukesha location had
23 to hire a third road technician in about January of
24 2020?

25 A Correct.

1 Q Were you involved in making the decision to hire
2 a third road technician at Waukesha?

3 A Yes.

4 Q And the basis for that decision was because you
5 had a lot of road repair work to do, is that accurate?

6 A Yes.

7 Q What happens if a machine from the Franksville
8 location breaks down out in the field?

9 A We hire companies like Pirtek that was mentioned
10 earlier or Roland Machinery, outside sources.

11 Q Have you ever assigned a road technician from
12 Waukesha to repair equipment in the field from the
13 Franksville facility?

14 A Yes.

15 Q How often?

16 A No more than any other store. I don't know. We
17 service -- we help Fond du Lac, we help Sun Prairie, and
18 we help Franksville weekly.

19 Q Weekly?

20 A Yeah.

21 Q And the road technicians from the Waukesha store,
22 those are all nonunion road technicians?

23 A Yes, sir.

24 Q To your knowledge, they were doing the same work
25 as the road technicians at the Franksville store were

1 doing when Franksville had a road technician?

2 A Yes.

3 Q If we go to General Counsel Exhibit 25, there's
4 some pictures.

5 A Is it in the binder?

6 Q Yeah. It's in the blue binder. They were the
7 pictures you were going over earlier.

8 A Okay.

9 Q If you'll go to Page 7 of that document. Let me
10 know when you're there.

11 A Yes.

12 Q Okay, you are. The orange piece of equipment on
13 the back of the trailer there, I think you had -- what
14 piece of --

15 A Backhoe, micro backhoe.

16 Q Thank you. You testified that that piece of
17 equipment is now at the Waukesha store, is that correct?

18 A Yes. Or rented hopefully.

19 Q But it would be part of the Waukesha store's
20 inventory?

21 A Yes.

22 Q Okay. How many micro backhoes like this do you
23 have at the Waukesha store?

24 A I tend to keep one or two there.

25 Q And how could you identify that this particular

1 micro backhoe is at the Waukesha store?

2 A That's Ryan Helmer, my driver driving that truck,
3 and Racine didn't have one of these units down there.

4 Q So your driver, Ryan Helmer, was taking this from
5 Racine to the Waukesha store, is that what was going on
6 here?

7 A An internal transfer, yes.

8 Q If you'll go to Page 29 now of this same exhibit.

9 A Yes.

10 Q Talking about that piece of equipment to the far
11 left, I think you identified it as a rough-terrain
12 forklift. Do you see that?

13 A Yes, I do.

14 Q So you mentioned that that piece of equipment is
15 not allowed at Franksville --

16 A Correct.

17 Q -- is that accurate?

18 A Yes.

19 Q Who told you that?

20 A Jason Mayfield.

21 Q Where is that piece of equipment now?

22 A Not there. I don't know where.

23 Q Is it at your Waukesha store?

24 A It could be. It could be anywhere. We transfer
25 between locations. This time of year with utilization

1 now, it could be in Ohio for all we know.

2 Q If a customer wants a piece of large equipment in
3 the southern Milwaukee area, who absorbs the
4 transportation costs for that?

5 A The store does writing the contract, so it would
6 be Waukesha, Franksville, Fond du Lac.

7 Q So if it's a larger piece of equipment going from
8 Waukesha to the southern Milwaukee market, that would be
9 more expensive for the Waukesha store than it would be
10 for the Franksville store, is that correct?

11 A Rephrase it.

12 Q I'll break it down a little bit. So Waukesha is
13 located to the -- is it the west of Milwaukee, is that
14 correct?

15 A Yeah. Milwaukee -- like south Milwaukee is
16 almost the halfway point between the Franksville
17 location and the Waukesha location all the way up to the
18 airport.

19 Q So if a customer wanted a piece of equipment
20 south of Milwaukee, it would be further -- there would
21 be -- it would be a further transportation to go from
22 Waukesha to that location than from Franksville to that
23 location, is that correct?

24 A Not to Milwaukee, not to south Milwaukee, but
25 once you get to Oak Creek, then it would be closer to

1 Franksville.

2 Q So there are locations that are closer to
3 Franksville than Waukesha, correct?

4 A As far as job sites?

5 Q Yes, where customers are renting equipment.

6 A Yeah, they rent them all over the place.

7 Q And so if a customer wants to rent a piece of
8 equipment from the -- any location that's further from
9 Waukesha than it would be from the Franksville store,
10 that cost would be absorbed by the Waukesha store?

11 A Yes, sir.

12 MR. WIESE: Nothing further.

13 JUDGE ROSAS: Charging Party?

14 MR. RYAN: Yes, just a couple questions.

15 THE WITNESS: Do I leave the book open or no?

16 CROSS EXAMINATION

17 BY MR. RYAN:

18 Q You know, why don't we start on that General
19 Counsel Exhibit 25, Page 29 while it's still in front of
20 you.

21 A Okay.

22 Q The Deere equipment in the back there --

23 A Yeah.

24 Q -- what is that again?

25 A It's a -- it's a mini excavator. I can't tell

1 what size or anything.

2 Q So you don't know the weight on that one?

3 A No.

4 JUDGE ROSAS: What page?

5 MR. RYAN: Page 29. That's all I have for that.

6 THE WITNESS: Okay.

7 BY MR. RYAN:

8 Q I think in your direct testimony, you mentioned
9 that the Franksville location was doing 60 to 70 percent
10 cash transactions?

11 A Yes, sir.

12 Q What does the other 30 to 40 percent consist of?

13 A It would be mainly key accounts, in state, out of
14 state.

15 JUDGE ROSAS: I'm sorry. What kind of accounts?

16 THE WITNESS: Key, K-E-Y, strategic accounts.

17 BY MR. RYAN:

18 Q And what is that? Can you explain that to me a
19 bit more?

20 A That would be like a customer, like Fenmore
21 that's based out of Madison doing work in that
22 territory, or a customer like Day & Zimmermann, you
23 know, from out of state working at a power plant, you
24 know, it would be large contract, Walsh Construction
25 working on I-94.

1 Q All right. For those key accounts, are they
2 coming to Franksville to pick up the equipment or is
3 that being delivered?

4 A It's a mixture.

5 Q A mixture. But equipment is still being
6 delivered out of the Franksville location?

7 A Yes, sir.

8 Q What's the name of that operations manager?

9 A Michael Schwaiger.

10 Q I'm sorry. What was the last name?

11 A Schwaiger, S-C-H-W-A-I-G-E-R.

12 MR. RYAN: I think that's all I have. Thank you
13 very much.

14 JUDGE ROSAS: Any redirect?

15 MS. HILL: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MS. HILL:

18 Q Mr. Rivera, you were asked several questions
19 about the territory for Waukesha and for Franksville and
20 the big equipment, the equipment more than 10,000
21 pounds.

22 Do you know, based on the fact that the big
23 equipment's no longer in Franksville, some of it went to
24 Waukesha, has that increased the business for the Franks
25 -- for the Waukesha location?

1 A Increased, no.

2 Q It has not?

3 A No.

4 Q Do you know what percentage of dollar amount of
5 business Franksville had at the time you took over as
6 the profit center manager just dealing with the big
7 equipment, anything over 10,000 -- 10,000 pounds or
8 more?

9 A No. I have no reason to ask for it.

10 Q So even with the business that you are handling
11 out of Waukesha for the big equipment, your revenue has
12 not increased, just taking over from the Franksville
13 location?

14 A I see what you're saying. Yes, yes.

15 Q Okay. And what percentage?

16 A I don't have a percentage.

17 Q A dollar amount?

18 A I would say 150 to \$200,000 a month.

19 Q And is that the same amount of business that the
20 Waukesha location had been doing prior to you getting
21 that business?

22 A The market has been up and down. It's hard to
23 tell where -- the increases, where they came and where
24 the decreases came from.

25 Q And the key accounts, strategic accounts that you

1 were referencing --

2 A Yes.

3 Q -- the equipment that they might pick up at the
4 Franksville location, are you referring to the 10,000 --
5 less than 10,000 pounds?

6 A Yes.

7 Q And with respect to Mr. Schwaiger, approximately
8 when did he become the operations manager?

9 A Approximately September, late August, early
10 September.

11 MS. HILL: Thank you.

12 No further questions, your Honor.

13 JUDGE ROSAS: Any follow-up?

14 MR. WIESE: No, your Honor.

15 JUDGE ROSAS: Charging Party?

16 MR. RYAN: Just really quickly.

17 RE CROSS EXAMINATION

18 BY MR. RYAN:

19 Q The equipment being delivered out of Franksville
20 now, has any of it -- well, let me ask. Sorry.

21 How is equipment being delivered out of
22 Franksville say within the past month?

23 A Through Putter's Trucking, the outside service.

24 MR. RYAN: Thank you.

25 JUDGE ROSAS: Any follow-up? Anything?

1 MS. HILL: No, sir.

2 JUDGE ROSAS: Okay. Thank you.

3 Sir, you're excused. Please do not discuss your
4 testimony with anyone unless you're advised by counsel
5 that the case is over.

6 THE WITNESS: Okay. Thank you.

7 JUDGE ROSAS: Thank you. Have a good day.

8 Off the record.

9 (Recess.)

10 JUDGE ROSAS: On the record. Morning.

11 Your next witness.

12 MS. HILL: Rebel Strohmeier. She testified
13 before, your Honor.

14 JUDGE ROSAS: I'll remind you that you're still
15 under oath.

16 DIRECT EXAMINATION

17 BY MS. HILL:

18 Q Since the last time you testified, Ms.
19 Strohmeier, have any of your responsibilities changed?

20 A No.

21 Q Were you part of the decision to reorganize the
22 Franksville profit center into a will call facility?

23 A No, I was not.

24 Q When did you learn about it?

25 A On the afternoon of August 5th.

1 Q And who informed you?

2 A My director, Vicky Gibson.

3 Q And after being informed by Ms. Gibson, did you
4 speak to anyone else within Sunbelt about the
5 reorganization?

6 A Not until the next morning.

7 Q And who did you speak to then?

8 A Jason Mayfield.

9 Q And what did you and Mr. Mayfield discuss?

10 A I had e-mailed him a draft of a letter notifying
11 the union of the reorganization for him to review and
12 sign and deliver to the union so that the next
13 negotiation session that was scheduled for that
14 Thursday, it could be used to bargain the
15 reorganization.

16 Q And did you have anything to do with that letter
17 to the union after discussing it with Mr. Mayfield?

18 A I did not.

19 Q What was your next role with respect to the
20 reorganization?

21 A I was involved in drafting the separation notice
22 for the two employees that were eliminated, and I was
23 involved in drafting a letter to them just kind of
24 spelling out what was happening with the reorganization,
25 and the elimination of their position, and what they

1 could expect insofar as wages and Cobra and PTO payouts
2 and those sorts of things.

3 Q And with respect to the separation notice, you
4 prepared the whole thing?

5 A Yes.

6 Q Did anyone revise it after you prepared it?

7 A No.

8 Q Based on that separation notice, were the
9 employees -- were the two employees eligible for rehire?

10 A Yes.

11 Q What was your next involvement with respect to
12 the two employees who were being laid off?

13 A I called in for both of their separation
14 meetings. They were both met with individually with
15 Bryan Anderson and Bo Bogardus, and I was on the phone
16 for those conversations so that I could cover the HR
17 portion of those conversations.

18 Q Could you please explain what the HR portion of
19 that conversation involved.

20 A Yes. So they received a separation notice, and
21 then they received the letter that I had drafted just
22 notifying them that they would be paid through the next
23 Friday, through August 16th, so I explained how that
24 would work, when they would receive their next checks.
25 I gave them each their respective balance for their PTO

1 payouts. I talked about the process for Cobra. And I
2 also reminded them that they were eligible for rehire.
3 And in the letter it stated where they would be able to
4 find those job postings since they were no longer able
5 to review the internal postings for Sunbelt.

6 Q Do you recall which conversation occurred first?

7 A Kyle McKellips occurred first.

8 Q For Mr. McKellips' conversation, did he ask any
9 questions?

10 A He did ask if I could provide him with his final
11 paystubs. He had a -- he was working on a mortgage for
12 a new home or a loan approval, and I told him -- I made
13 sure he had my contact information, and I said once
14 those paystubs are finalized, I'll send them to you, and
15 we exchanged contact information. Those were the only
16 questions that I recall that were directed towards me.

17 JUDGE ROSAS: Counsel --

18 MS. HILL: Sorry.

19 JUDGE ROSAS: -- there was pretty thorough
20 testimony on the General Counsel's case by this witness
21 regarding the layoff process, so I'm going to ask you to
22 be selective on what you need to ask her. All right?
23 We have testimony with respect to General Counsel's
24 Exhibits 17, 19, 20, 32, 33, 46 and 57. Go ahead.

25 ///

1 BY MS. HILL:

2 Q With respect to Mr. McKellips' telephone
3 conversation, did Mr. Anderson say anything during that
4 conversation?

5 A Not that I can recall.

6 Q Do you know what, if any -- oh, did Mr. McKellips
7 have any personal property?

8 A Oh, we did discuss -- one of the items that we
9 did discuss collectively was the tools, so what the
10 employees would need to do in order to secure their
11 tools, and we arranged for -- to kind of make some
12 pick-up arrangements for those.

13 I do recall there was a discussion with
14 Mr. McKellips about he didn't have a place to store his
15 tools, and so they were working out an arrangement with
16 him about, you know, possibly transporting them to a
17 temporary facility to store his tools while he was in
18 transition.

19 Q With respect to these two individuals, are you
20 aware of whether Mr. McKellips or Mr. Romanowski have
21 applied for any open positions at Sunbelt?

22 A They have not applied for any open positions, or
23 as of last week, I checked with the senior recruiting
24 manager for the northeast territory, and I asked him to
25 run a report, just to make sure, against their names,

1 socials and employee IDs, and there was nothing in the
2 system for them that they had applied for any positions
3 within Sunbelt since their separation.

4 Q Now, the judge just discussed several exhibits
5 that had been discussed in December with you, and what I
6 would like you to do, there are two binders in front of
7 you, the blue binder has the General Counsel's exhibits,
8 the black binder has the Respondent's exhibits. I would
9 like you to turn to the black binder, and please look at
10 Exhibit -- Respondent Exhibit 11 if you would, please.

11 A Okay.

12 Q Do you recognize what Respondent's Exhibit 11 is?

13 A It's a requisition for an HVAC position at our PC
14 1179 which is a Climate Control facility.

15 Q And what is the significance of this particular
16 requisition with respect to the Franksville location?

17 A This requisition was the one that was filled with
18 a transfer for Mario Rivera.

19 Q So the hiring manager for that Watertown location
20 was Mr. Bergdoll?

21 A Yes.

22 Q And is this the requisition that Mr. Mario Rivera
23 ultimately assumed or filled I should say?

24 A Actually, no. So there was -- I work for the GT
25 side. Climate Control is separate. Mr. Rivera was in

1 the process of transferring to this location, 1179 in
2 Watertown, and he had applied for the position on the
3 morning of August 5th, his transfer was initiated on
4 August 7th, that morning, and later that day he was
5 injured at our PC in Racine, and he was already in
6 process to transfer to this position. He had -- was
7 going to fill this position with an effective date of
8 August 8th.

9 But when he was injured and he was out, that --
10 his transfer didn't finalize, so when I talked to
11 Climate Control to kind of see what happened since that
12 position was still open and posted, there was another
13 candidate whose actually listed on this, Brandon
14 Tetzlaff, who lived in the Watertown area, and they
15 ended up filling this position with him, because in the
16 interim, while Mario was out with his injury, on August
17 30th, there was an HVAC technician at the Waukesha
18 location that resigned effective August 30th, Rodney
19 Reed, and so Climate Control made the ultimate decision
20 that they had this qualified candidate, Brandon
21 Tetzlaff, who they filled their position at Watertown,
22 and in the best interest of Mario, and the position in
23 Waukesha being closer to his home, they filled the
24 position in Waukesha with Mario.

25 Q Thank you. Are you familiar with an employee at

1 the Franksville location by the name of Jamie Smith?

2 A Yes.

3 Q Did you have any communications, whether verbal
4 or via e-mail, with Mr. Smith?

5 A During his employment?

6 Q Yes, ma'am, I'm sorry, during his employment?

7 A Yes.

8 Q And what was that with respect to?

9 A I spoke with Mr. Smith on multiple occasions. I
10 sat in on one of his disciplinary discussions. And I
11 was also part of a discussion that he had in June of
12 2019 in which he was interested in pursuing further
13 education.

14 Q What type of education?

15 A I'm not exactly sure what classes he was taking,
16 but he was inquiring about modifying his schedule, and I
17 was providing information on Sunbelt's tuition
18 assistance program.

19 Q Did he discuss with you what the -- the modified
20 work schedule he was looking for?

21 A He was looking -- I believe it was two to three
22 afternoons a week he wanted to be off at a certain time
23 in the middle of the afternoon.

24 Q Are you the person who can handle the
25 rescheduling of an individual's work schedule?

1 A I am not, but I did discuss that with his manager
2 at the time, Bryan Anderson.

3 Q As part of your responsibilities in Human
4 Resources, are you responsible for investigations?

5 A Yes.

6 Q Were you assigned the task of any investigations
7 in the summer of 2019 for the Franksville location?

8 A Yes.

9 Q What did that entail?

10 A I received information on August 8th that there
11 was concern that Mario Rivera had made some threatening
12 remarks directed towards either a member or a collective
13 unit of the 139, and so my responsibility, I called the
14 other employees at the location to ask them general
15 questions about anything that they may have heard, any
16 threatening remarks and then specific questions if they
17 heard Mario make any kind of threatening remarks or
18 language.

19 Q What was the result of your investigation?

20 A I spoke to -- that day, August 8th, I spoke to
21 Kyle McKellips, Al Romanowski and the service manager at
22 the time, Chris Pender, and none of them had any
23 specific information.

24 Kyle, he stated that -- he was the first one that
25 I spoke to, and he stated that he didn't know of

1 anything specific, and that it had just been a tense
2 time around that location, and in closing, he told me
3 that he was feeling very scatterbrained.

4 And when I talked to Chris Pender, he said that
5 all of the guys had made remarks from time to time, it
6 was just, you know, a difficult time, but he couldn't
7 recall anything specific from Mario.

8 And when I talked to Al Romanowski, he said he
9 doesn't speak to Mario, and that he hadn't heard
10 anything, and then he shared some frustration that he
11 said that Mario doesn't always wear steel-toed shoes,
12 but that was it.

13 And Mario was out at the time, he was in the
14 hospital at that time, it was immediately the day after
15 his injury, so I didn't speak with him until August 15th
16 on the telephone, and I asked him if he had ever made
17 any kind of threatening remarks or anything like that,
18 and Mario said he didn't make anything towards any
19 person.

20 He did say in passing in the presence of Kyle at
21 one time that they were at the PC, they were looking
22 out -- just kind of looking out the roll-up doors, and
23 he said somebody should shoot that air balloon, and I
24 asked him what he meant by that, and he said that big
25 rat, but no person, no unit, no identified anything

1 else.

2 Q And as a result of interviewing the three
3 co-workers and Mr. Rivera, what was your determination?

4 A I typed up all my notes and shared them with
5 Jason Mayfield, and I told him that after speaking to
6 all of those employees and asking them specific
7 questions, that there was no -- no one could recall any
8 specific remarks made by Mario that were perceived to be
9 threatening.

10 Q As the HR professional assigned to the
11 Franksville location, were you involved in any way in
12 the separation of Katie Torgerson?

13 A I was there at her termination meeting, and I
14 drove her home after her separation.

15 Q Did -- who else attended the separation meeting?

16 A Bo Bogardus.

17 Q Did Mr. Bogardus say in that meeting with Ms.
18 Torgerson that the reason for her termination was in any
19 way related to the union?

20 A No, not that I can recall.

21 Q With respect to your responsibilities in
22 Michigan, are you familiar with the Collective
23 Bargaining Agreements there?

24 A Yes.

25 Q Is there one agreement for the entire state?

1 A No. Each union location in Michigan has its own
2 contract.

3 Q Are they identical?

4 A No.

5 Q All right. If you would please turn to the blue
6 binder, and it's -- and your Honor, yes, I know she was
7 asked very briefly about this exhibit in December, but
8 I'm going to ask it --

9 JUDGE ROSAS: And the witnesses, the employees
10 affected by those actions reflected in the exhibits
11 testified, and to the extent that there was no
12 conflicting testimony, it would be cumulative. So
13 again, I ask you to be selective in what you need to
14 elicit from her.

15 MS. HILL: I'm trying, sir. Thank you.

16 BY MS. HILL:

17 Q Is there a section of this exhibit that is --

18 JUDGE ROSAS: Hold on one second. You're
19 offering Respondent's 11?

20 MS. HILL: Oh, yes, sir. Thank you very much,
21 sir. Sorry.

22 JUDGE ROSAS: Okay. Any objection?

23 MR. WIESE: No objection, your Honor, from the
24 General Counsel.

25 MR. RYAN: No objection.

1 JUDGE ROSAS: Let me just understand what it is.
2 So it's a requisition?

3 THE WITNESS: Oh, I'm sorry, I didn't hear the
4 number.

5 JUDGE ROSAS: Respondent's Exhibit No. 11 is the
6 requisition --

7 MS. HILL: Going back in the --

8 THE WITNESS: In the black --

9 MS. HILL: The black, yes.

10 THE WITNESS: Okay.

11 JUDGE ROSAS: -- to fill a position?

12 THE WITNESS: Yes.

13 JUDGE ROSAS: And there's a whole bunch of pages.
14 What's with all the pages that are basically blank,
15 except for I guess the running tabulation along the
16 extreme right-hand margin?

17 THE WITNESS: So our HR information system is
18 called Workday, and this report -- and this is a
19 recruiting report. This isn't usually part of my
20 responsibility. Recruiting is separate. But when you
21 bring up a requisition number, you have the opportunity
22 to download a report that shows the history of that
23 requisition, and this is just what it looks like when
24 you convert that to a PDF.

25 JUDGE ROSAS: Okay. And this may have been

1 established earlier in the testimony, but as far as the
2 operations of the company is concerned, obviously the
3 General Tool component of it is obvious as far as what
4 the company's business is, but what is the Climate
5 Control operations of the company? The company does
6 HVAC servicing?

7 THE WITNESS: So Climate Control, and my main
8 understanding of what they do because I'm in General
9 Tool, is they do have heating units, and they'll install
10 temporary heating and air for buildings under renovation
11 or just units for --

12 JUDGE ROSAS: Oh, like at construction sites --

13 THE WITNESS: It can be construction sites, yes.

14 JUDGE ROSAS: -- trailers, things of that sort?

15 THE WITNESS: Yes.

16 JUDGE ROSAS: I see. But they're not an HVAC
17 company?

18 THE WITNESS: They're not an HVAC company,
19 although a majority of their technicians are HVAC
20 certified so that they can install some of the more kind
21 of complex heating units and stuff, because some of them
22 will tie into a building's existing heating unit, like
23 when it's under renovation or something like that is my
24 understanding.

25 JUDGE ROSAS: Okay. All right. So Respondent's

1 11 is received.

2 MS. HILL: Thank you, sir.

3 (Respondent's 11 was received.)

4 BY MS. HILL:

5 Q All right. Blue binder, Exhibit 46.

6 A It goes from 40 to 47.

7 MS. HILL: What happened to 46?

8 MR. WIESE: Oh, I think it's in the front
9 actually. I apologize for that. There should be a
10 color copy in there behind a big sheet of paper.

11 THE WITNESS: Oh, okay.

12 MR. WIESE: Sorry about that.

13 MS. HILL: Thanks.

14 THE WITNESS: This one?

15 MR. WIESE: Yes.

16 BY MS. HILL:

17 Q All right. You were asked just a very short
18 question regarding this particular policy. This Section
19 5 of the personnel and payroll administration policies
20 and procedures, is anything there relevant to layoffs?

21 A There is a Section 5.8.3 that starts with layoffs
22 and requires that managers must contact the Human
23 Resources Department prior to performing a layoff.

24 Q All right. Did Sunbelt follow this policy with
25 respect to Mr. McKellips' layoff?

1 A My understanding would be yes, because I received
2 the first notification from my director, which is the
3 territory director of HR, Vicky Gibson, regarding the
4 layoff.

5 Q And did Sunbelt follow this policy with respect
6 to the layoff of Mr. Romanowski?

7 A Yes.

8 Q Did you review this layoff section of this policy
9 prior to the meetings with the two individuals who were
10 laid off at the Franksville profit center?

11 A Yes.

12 MS. HILL: No further questions. Pass the
13 witness.

14 JUDGE ROSAS: Okay. General Counsel?

15 MR. WIESE: Just two minutes quick to review my
16 notes. I'll be quick.

17 JUDGE ROSAS: Do you need a restroom break or
18 anything?

19 THE WITNESS: No.

20 MR. WIESE: I'm ready, your Honor.

21 JUDGE ROSAS: Okay. General Counsel.

22 CROSS EXAMINATION

23 BY MR. WIESE:

24 Q Good morning, Ms. Strohmeier. Just a couple of
25 brief questions.

1 Besides Ms. Hill, did you speak with anyone else
2 in preparation for your testimony today?

3 A No.

4 Q Did you review any documents in preparation for
5 your testimony today?

6 A I did.

7 Q Which documents?

8 A I reviewed my last affidavit, the affidavit
9 regarding the reorganization, and I reviewed some of my
10 documentation, the separation notices and the letters
11 that were given to those employees, Kyle and Al.

12 Q And are those the documents that we had talked
13 about in your testimony back in December?

14 A Yes.

15 Q Okay. Did you review any transcripts?

16 A No.

17 MR. WIESE: I have nothing further.

18 JUDGE ROSAS: Charging Party?

19 MR. RYAN: Just a couple quick questions.

20 CROSS EXAMINATION

21 BY MR. RYAN:

22 Q When you were talking about the investigation
23 about Mario Rivera, you said that you spoke with Kyle
24 and Chris on August 8th?

25 A Yes.

1 Q Was that before or after the conversation about
2 the layoff of Kyle and --

3 A Oh, it was before.

4 Q It was before.

5 A It was early that morning.

6 MR. RYAN: Nothing further. Thank you.

7 JUDGE ROSAS: Anything?

8 MS. HILL: No redirect.

9 JUDGE ROSAS: Thank you, ma'am. You're excused.
10 Please do not discuss your testimony with anyone until
11 you're advised by counsel that the case is over. All
12 right?

13 THE WITNESS: Okay. Thank you.

14 JUDGE ROSAS: Off the record.

15 (Pause in the proceedings.)

16 JUDGE ROSAS: On the record.

17 MS. HILL: This is Chris Pender, your Honor.

18 And that's the witness stand over there.

19 JUDGE ROSAS: Sir, please raise your right hand.

20 (Whereupon,

21 CHRISTOPHER WANE PENDER,
22 was called as a witness by and on behalf of Respondent
23 and, after having been duly sworn, was examined and
24 testified as follows:)

25 THE WITNESS: Yes, sir.

1 JUDGE ROSAS: Please have a seat, state and spell
2 your name and provide us with an address.

3 THE WITNESS: It's Christopher Wane Pender
4 spelled C-h-r-i-s-t-o-p-h-e-r W-a-n-e P-e-n-d-e-r.
5 Address is West 231 North 1125 County Highway F,
6 Waukesha, Wisconsin, 53186.

7 MS. HILL: Thank you, sir.

8 DIRECT EXAMINATION

9 BY MS. HILL:

10 Q Thank you, sir. Who is your employer?

11 A Sunbelt Rentals.

12 Q How long have you worked for Sunbelt?

13 A A little over six years.

14 Q What is your current title, sir?

15 A Mechanic level III.

16 Q And which division of Sunbelt?

17 A General Tools.

18 Q Where do you work as a mechanic III, sir?

19 A At the Waukesha store, PC 365.

20 Q Since when?

21 A I started back there the 11th of November of
22 2019.

23 Q Before working as a mechanic III, what was your
24 position?

25 A I was a service manager at PC 776 in Franksville.

1 Q Did you have an office at the Franksville
2 location?

3 A Yes.

4 Q Where was it located?

5 A Right outside the shop.

6 Q Sir, there's two binders sitting there, and if
7 you would please look at the black binder --

8 A All right.

9 Q -- and it's the very first exhibit. It should
10 indicate Respondent 1 or R 1?

11 A Page 1 here, yes.

12 Q All right. And where would your office be with
13 respect to this drawing, if you can even figure that
14 out, sir? This is not to scale.

15 A Right, right. So where it says "hallway" into
16 the shop --

17 Q Yes, sir.

18 A -- my office was actually on the back side inside
19 the shop, and there was a --

20 JUDGE ROSAS: Referring to the left-hand
21 column -- left-hand side of the page?

22 THE WITNESS: Correct. Where it says "office,"
23 my office was on the other side of that wall.

24 BY MS. HILL:

25 Q Okay. So you shared a wall there?

1 A Correct.

2 Q And it had a door?

3 A Yes.

4 Q And from when to when did you work at the
5 Franksville location?

6 A June of '18, I believe, to November 11th of 2019.

7 Q Do you know Kyle McKellips?

8 A Yes.

9 Q And how do you know him?

10 A He was my road mechanic.

11 Q What kind of relationship did you have with
12 Mr. McKellips?

13 A I would say a very good one. He's a great
14 mechanic.

15 Q Did you mentor him?

16 A Yes, I did.

17 Q Did you ever meet with Mr. McKellips in your
18 office?

19 A Yes, I did.

20 Q I'll try to speak up. I'm sorry.

21 A That's okay.

22 Q And when you met with him in your office, was the
23 office door closed?

24 A Yes.

25 Q Did you ever question Mr. McKellips regarding his

1 union affiliation while he was in your office?

2 A No, ma'am.

3 Q In December of 2018 or January of 2019, did you
4 tell any of the employees at the Franksville location
5 that the union was not going to get in at that location?

6 A No.

7 Q The same time frame, December 2018 or January
8 2019, did you ever tell any of the employees at the
9 Franksville location that the union was not going to
10 happen?

11 A No.

12 Q December 2018, January '19, did you ever threaten
13 the Sunbelt employees at Franksville that it would be
14 futile for them to select the union as their bargaining
15 representative?

16 A No.

17 Q As a service manager, what were your
18 responsibilities at the Franksville location? And let's
19 put it prior to the reorganization.

20 A There was -- I had to deal with purchasing of
21 parts, ordering parts, assigning job duties on a daily
22 basis, dealing with warranty repairs, outside vendors,
23 doing repairs for us, making sure that the shop was
24 running efficiently. If my mechanics had an issue
25 working on something, they could come to me, and I would

1 assist them. I work very hard to try and teach them
2 things that I knew that they didn't to make them a
3 better mechanic.

4 Q Could you give an example of some of the things
5 that you had to teach the two -- the mechanics you had?

6 A Let's see. There was a rough-train scissor lift
7 that we had three different service calls on, and no one
8 could figure out what was going on with it, so I brought
9 it into the bay closest to the office so if I need to
10 answer the phone, I could attend to my other duties as
11 well.

12 So I had the engine out, I was looking at
13 everything, and I started it and was kind of running it
14 through its paces, and I noticed that there was a wire
15 that was just simply loose, and it was the oil pressure
16 sensor wire.

17 And so I brought everybody together, I used it as
18 a teaching moment, because when we go through and look
19 at equipment, we have to look at everything so that it
20 operates as it should when it's on the job site, and
21 they're like holy cow, I never would have guessed it was
22 that, I would have started over here, over there. I
23 said well, this is where your issue is, it's a running
24 issue, it's not anything else, it's an engine issue, so
25 this is where we need to start. Everybody's like holy

1 cow, that's a great idea.

2 Q When you said you gathered everybody, could you
3 please name the people who are everybody.

4 A Kyle, Mario, Al and Ray.

5 Q And Ray, you're referring to Mr. Gutierrez?

6 A Yes.

7 Q And who was the -- who were the -- who was the
8 person, who were the people that said holy cow, I never
9 would have thought of that?

10 A Ray, Al and Kyle.

11 Q You also said that you assigned job duties. Are
12 you referring to the four individuals you just
13 identified?

14 A Yes.

15 Q The warranty work that had to be done, was that
16 done in the profit center or outside of the profit
17 center?

18 A There was some warranty work that was done inside
19 the profit center and some that was required to be done
20 by the dealers themselves.

21 Q And you said sometimes vendors had to do repairs?

22 A Yes.

23 Q Is that outside of the warranty work?

24 A Yes.

25 Q Did any of the mechanics, Mr. McKellips,

1 Mr. Rivera, Mr. Gutierrez, Mr. Romanowski, did they ever
2 complain about the equipment that you were sending out
3 to vendors to repair or the warranty work that had to be
4 done outside of the shop? Did they ever say don't send
5 it out there, we'll do it?

6 A I don't remember.

7 Q You just explained a moment of -- or an incident
8 in which you were teaching the other mechanics about
9 repairing something.

10 Did you ever repair equipment yourself?

11 A Yes.

12 Q All by yourself?

13 A Yes.

14 Q Did any of the mechanics who worked with you, did
15 they ever complain that you should not be doing that
16 work, that they should be doing it?

17 A No.

18 Q Did you ever do -- could you explain what
19 preventive maintenance is.

20 A Basically we go through the piece of equipment
21 from top to bottom and make sure that all electrical
22 connections are tight, oil -- it has oil, hydraulic oil,
23 trans fluid, we check batteries, it has a rollover
24 protection system, make sure that there's no cracks, you
25 know, bends, anything like that that's going to, you

1 know, limit it from doing its purpose.

2 Every piece of equipment we have, it has a
3 checklist on it, and we simply go through and make sure
4 piece by piece what needs to be done and looked at, and
5 you put your hands on every machine, every part of it.

6 Q And when you said "we," it sounds as if you also
7 did preventive maintenance?

8 A Yes.

9 Q Did you ever use the preventive maintenance as a
10 way of teaching the other mechanics then in your shop?

11 A Yes.

12 Q Did you ever deliver equipment when you were
13 service manager at the Franksville location?

14 A Yes.

15 Q The equipment that you did deliver, was it more
16 than 10,000 pounds?

17 A No.

18 Q Did you ever tell any of your employees that your
19 bosses at the Franksville location were telling you you
20 were not getting enough work done?

21 A No.

22 Q Do you recall a -- this is when you were a
23 service manager at Franksville. Do you recall a Billy
24 Joel concert?

25 A No.

1 Q I'll try to refresh your recollection about this.
2 Mr. Gutierrez, do you recall telling Mr. Gutierrez to
3 switch six-foot forks with four-foot forks on eight
4 forklifts?

5 A I remember that there was a big order, but I
6 don't remember who I specifically said to switch forks.

7 Q Did you have any problems working with Mr.
8 Gutierrez?

9 A No.

10 Q Ranking the mechanics in your shop, sir, from
11 top, you know, the best to not the best, how would you
12 rank them, sir?

13 MR. WIESE: Objection, relevance.

14 JUDGE ROSAS: I'm going to sustain that.

15 BY MS. HILL:

16 Q Okay. Are you familiar with Pirtek?

17 A Yes.

18 Q Did you work with Pirtek at your Franksville
19 location?

20 A Yes, I did.

21 Q Is that one of the outside vendors you were
22 referring to?

23 A Yes, ma'am.

24 Q Okay. And what did they do?

25 A They repaired hydraulic lines for us.

1 Q Would those hydraulic lines be on small and large
2 equipment?

3 A Yes.

4 Q Do you use Pirtek at your Waukesha location?

5 A Yes, we do.

6 Q For the same type of work?

7 A Yes, ma'am.

8 MS. HILL: No further questions.

9 JUDGE ROSAS: General Counsel, cross?

10 MR. WIESE: Just a minute.

11 JUDGE ROSAS: Sure. Off the record.

12 (Pause in the proceedings.)

13 JUDGE ROSAS: Okay, back on.

14 CROSS EXAMINATION

15 BY MR. WIESE:

16 Q Good morning, Mr. Pender. My name is Tyler
17 Wiese. I'm an attorney with the National Labor
18 Relations Board. I'm going to be asking you a couple
19 questions today. Okay?

20 A Okay.

21 Q Your current position as a mechanic III at the
22 Waukesha store -- do I have that right?

23 A Yes, sir.

24 Q Do you have any disciplinary authority in that
25 position?

1 A No.

2 Q Do you assign employees work in that position?

3 A No, sir.

4 Q Do you hire employees?

5 A No, sir.

6 Q Do you have any other supervisory duties in that
7 position?

8 A No, sir.

9 Q Did you speak with Ms. Hill prior to testifying
10 today?

11 A Yes.

12 Q When did you speak with her?

13 A Last week.

14 Q Where did that conversation take place?

15 A At the Waukesha store.

16 Q Who was present for that conversation?

17 A Myself and my lawyer.

18 Q When you say your lawyer, who are you talking
19 about?

20 A Ms. Hill.

21 Q Did Ms. Hill advise you of the purpose of your
22 questioning?

23 A Yes.

24 Q And what did she say?

25 MS. HILL: Objection. This is -- as he said, Mr.

1 Pender asked me to represent him for this hearing.

2 JUDGE ROSAS: That's not covered -- that's not --
3 that's outside the privilege?

4 MR. WIESE: I didn't realize that Ms. Hill was
5 representing Mr. Pender in a personal capacity.

6 MS. HILL: He asked to have -- well, without
7 disclosing attorney-client privilege, he just said "my
8 lawyer."

9 JUDGE ROSAS: I mean is there a difference
10 between 211, 213 supervisors and managers and employees
11 that are under the control of the company for purposes
12 of, you know, the attorney-client discussions,
13 consultations?

14 MR. WIESE: Yes, there are. I mean there's
15 ethical concerns. There's also I mean Board protections
16 that apply to nonsupervisory employees being questioned
17 by company attorneys that I'm trying to elicit testimony
18 about, but --

19 JUDGE ROSAS: Are you talking about the Johnnie's
20 Poultry?

21 MR. WIESE: That's correct.

22 JUDGE ROSAS: Okay. What I'm going to allow you
23 to do is to ask him leading questions relating to
24 Johnnie's Poultry specifically. All right?

25 MR. WIESE: Okay.

1 BY MR. WIESE:

2 Q Mr. Pender, were you advised -- you were advised
3 by Ms. Hill of the purpose of your questioning at the
4 Waukesha facility?

5 A Yes.

6 Q Okay. And did Ms. Hill advise you that your
7 participation in the questioning was voluntary?

8 A No.

9 Q Did Ms. Hill state that you would be free from
10 reprisal based off of your answers to her questions?

11 A I don't understand that.

12 Q Did she tell you that you would not be retaliated
13 against in any way based off your answers to her
14 questions?

15 A I guess I don't understand what you're saying,
16 what you're trying to ask me. I apologize.

17 Q No. That's okay.

18 A So basically what -- let me see if I can
19 understand what you're saying to me is that because of
20 what I'm saying at this stand is not going to affect my
21 job?

22 Q That's correct.

23 A Yeah, that's not going to affect my job at all.

24 Q And were you told that by Ms. Hill --

25 A Yes.

1 Q -- at this meeting?

2 A Yes.

3 Q Okay. Thank you. Did you speak with anybody
4 else besides Ms. Hill in preparation for your testimony
5 today?

6 A No.

7 Q Did you review any documents in preparation for
8 your testimony today?

9 A Yes.

10 Q What documents?

11 A I saw some pictures.

12 Q Okay. If you look at General Counsel --

13 MS. HILL: The blue binder.

14 MR. WIESE: Thank you.

15 BY MR. WIESE:

16 Q In the blue binder, Exhibit 25.

17 A Yes, sir.

18 JUDGE ROSAS: She didn't ask him any questions
19 about the pictures.

20 MS. HILL: Right. I was just --

21 JUDGE ROSAS: I mean you can ask him what he's
22 looked at, but --

23 MR. WIESE: Yeah.

24 MS. HILL: Right.

25 MR. WIESE: I'm not going to get into the

1 details. I'm going to have him identify.

2 BY MR. WIESE:

3 Q Are these the pictures you looked at as best you
4 can tell?

5 A Yes.

6 Q Do you recall looking at any other pictures
7 besides the ones in General Counsel Exhibit 25?

8 A No, sir.

9 Q Did you review any transcripts in preparation for
10 your testimony today?

11 A No, sir.

12 Q You talked about an outside vendor called Pirtek.
13 Am I saying that right?

14 A Yes.

15 Q Okay. And they specialize in hydraulic lines?

16 A Yes.

17 Q Do they perform any other repairs for Sunbelt
18 outside of hydraulic lines?

19 A They do just about everything hydraulic. So if
20 there was an O-ring leak, they would repair that. They
21 make hoses for us.

22 Q But that's all limited to hydraulic work?

23 A Correct.

24 Q So if it was engine work, for example, that
25 wouldn't go to Pirtek?

1 A That wouldn't go to Pirtek.

2 Q And your current position as a mechanic III at
3 Waukesha, is that an hourly position?

4 A Yes.

5 Q Your service manager position at Franksville,
6 that was a salary position?

7 A Yes.

8 Q It was your decision to transfer from the
9 Franksville store to the Waukesha store, is that
10 correct?

11 A Yes.

12 Q Your decision, was that based on, in any way, the
13 number of hours you were working at the Franksville
14 store?

15 A Between my commute and my young family at home,
16 it made more sense to take a position back in Waukesha.

17 Q After the mechanics were laid off at the
18 Franksville store, were you working more hours as a
19 service manager?

20 A Yes, a little bit.

21 Q Did your job duties change after the mechanics
22 were laid off?

23 A Yes.

24 Q Were you doing more maintenance work than you
25 were prior to when the mechanics were laid off?

1 A Yes.

2 MS. HILL: Objection.

3 JUDGE ROSAS: Overruled.

4 You can answer.

5 THE WITNESS: Yes.

6 BY MR. WIESE:

7 Q How much more?

8 A Not a ton more, but there was an extra bit of
9 work. I lost four mechanics.

10 Q And you were doing the maintenance work that had
11 previously been done by those four mechanics?

12 A Yes.

13 MR. WIESE: Nothing further.

14 JUDGE ROSAS: Charging Party?

15 MR. RYAN: I don't think I have anything. Thank
16 you.

17 JUDGE ROSAS: Okay. Any redirect?

18 MS. HILL: Just a moment, your Honor.

19 No further questions.

20 JUDGE ROSAS: Okay. Thank you. Sir, you're
21 excused. Please do not discuss your testimony with
22 anyone until you're advised by counsel that the case is
23 over. All right?

24 THE WITNESS: Certainly.

25 JUDGE ROSAS: Have a good day.

1 Off the record.

2 (Recess.)

3 JUDGE ROSAS: On the record.

4 MR. WIESE: Your Honor, based off of the
5 testimony of Mr. Pender regarding the Johnnie's Poultry
6 issue, I request to amend the complaint to include an
7 allegation that Ms. Hill's questioning of Mr. Pender
8 violated Section 81 of the Act.

9 JUDGE ROSAS: Opposition?

10 MS. HILL: Yes, sir. With respect to Mr. Pender,
11 he was going to be a witness prior to the -- his
12 transfer. He -- in fact, we were going to have him
13 testify in December if we could have gotten the -- you
14 know, everything moving along fast enough. And after
15 his move, I did go through the proper procedure to ask
16 him questions. I will leave it at that. I asked him do
17 you want -- you know, do you understand what this is
18 about, do you understand this and all of that, your
19 Honor.

20 JUDGE ROSAS: Okay. All right. The motion is
21 granted. It's fairly routine these things come up
22 during testimony. So the complaint will be deemed
23 amended. What I would ask you to do, I don't know if
24 you have the capacity at the facility here to do it, is
25 to have an amended complaint showing the redline or not.

1 MR. WIESE: Yeah, I think I can figure out some
2 sort of a documentary solution to it. So you would like
3 a redline --

4 JUDGE ROSAS: Either a redline version after
5 lunch or a separate amendment to the complaint.

6 MR. WIESE: Okay. Yes, I will do that, your
7 Honor.

8 JUDGE ROSAS: Okay. Next witness.

9 MS. HILL: Yes.

10 (Pause in the proceedings.)

11 MS. HILL: This is Mario Rivera, your Honor.

12 JUDGE ROSAS: Okay. On the record.

13 Sir, do you want to come up here.

14 MS. HILL: Over there is the witness box.

15 THE WITNESS: Here?

16 MS. HILL: Yes, sir.

17 JUDGE ROSAS: Sir, please raise your right hand.

18 (Whereupon,

19 MARIANO RIVERA,
20 was called as a witness by and on behalf of the
21 Respondent and, after having been duly sworn, was
22 examined and testified as follows:)

23 THE WITNESS: Yes, sir.

24 JUDGE ROSAS: Please have a seat. State and
25 spell your name and provide us with an address.

1 THE WITNESS: My name is Mariano Rivera,
2 M-A-R-I-A-N-O R-I-V-E-R-A. My address is 1743 South
3 25th Street, Milwaukee, Wisconsin. Zip code?

4 JUDGE ROSAS: That's fine.

5 DIRECT EXAMINATION

6 BY MS. HILL:

7 Q Mr. Rivera, who is your employer?

8 A Sunbelt Rentals. Climate Control. Sorry.

9 Q Pardon?

10 A Sunbelt Rentals. Climate Control.

11 Q All right. Please explain what Climate Control
12 does.

13 A Climate Control is a specialty group. We work in
14 heaters and air conditioners only. We specialize in
15 that, and that's what we do.

16 Q Since when?

17 A I honestly don't recall a date. It was August.

18 Q Of which year, sir?

19 A Of this year.

20 Q Of 2020 or 2019?

21 A 2019. Sorry.

22 Q Thank you. How long have you worked for Sunbelt?

23 A Approximately five years.

24 Q And what positions have you held?

25 A I worked as a skid-steer mechanic -- excuse me.

1 I'm sorry. In the company of Sunbelt or in all
2 companies?

3 Q Yes, sir, in the company Sunbelt.

4 A I was a mechanic for skid-steers. I also went to
5 General Tools. I worked in heaters, because I was the
6 only one qualified to do heaters for them at the time.
7 We didn't have a Climate Control center, so I was the
8 one they called in the middle of the night. And I also
9 worked in various jobs. Pretty much everything in the
10 general store.

11 Q With respect to your Climate Control position,
12 where physically do you work?

13 A Where physically? I work at the Waukesha Climate
14 Control center.

15 Q When you worked for the General Tool Division,
16 which location?

17 A I worked at the Racine store, PC 776.

18 Q When you were in at the Franksville location, did
19 you participate in the election regarding the union?

20 A Yes, ma'am.

21 Q And in March of 2019, so last year, sir, did
22 anyone in Sunbelt's management ask you to report the
23 union activities of any other Sunbelt employee?

24 A No. I've never had a conversation with any of
25 the managers the whole time, even up until now, about

1 the union.

2 Q On or about April 22nd or 23rd, 2019, did you
3 hear anyone in Sunbelt's management interrogate Sunbelt
4 employees about union sympathies?

5 A No.

6 Q How did you go about being transferred from the
7 Climate Control -- excuse me -- from General Tool to the
8 Climate Control Division?

9 A If there's a job -- I'm sorry I laugh, because if
10 there's a job posting, and Sunbelt -- any employee of
11 Sunbelt is usually considered first on the list to move
12 on within the company to grow, and I'm always looking.
13 I'm still looking. You can go out of state. You can
14 move into different -- if you want to go warmer, you
15 want to go colder. You can pick where you want to go,
16 what stores have openings.

17 Basically I'm still looking, even though I just
18 moved, I've been there for a while. But I saw that
19 Climate Control had an opening. And I'm sure you're all
20 aware that I had double knee replacements, and General
21 Tools is a little hard on double knee replacements
22 trying to crawl on the ground.

23 Climate Control is a specialty, so it's kind of
24 like the more you know, the less you have to do, so to
25 speak, and I mean that with a great -- let me tell you,

1 that's huge, and I needed something less stressful on my
2 knees, and Climate Control had an opening in Wisconsin.

3 I was actually looking for Florida, because I'm
4 trying to relocate to Florida eventually, and I saw
5 Florida had an opening in Climate Control and Wisconsin,
6 and my wife does not want to move right now, so I -- and
7 I know Bo was transferred into that. Me and Bo have a
8 great relationship.

9 And I applied online, I believe it was like 5:00
10 in the morning, because I get up to go to work early,
11 and I saw the opening for Climate Control, and I jumped
12 on that right away. I remember the time, but I can't
13 remember the date, but it was 5:00 o'clock in the
14 morning, and I applied.

15 And I waited for a response, because there was an
16 opening in flooring, which is another less stressful
17 job, and I had considered that prior to Climate Control,
18 but that's a little more demanding, too. So Climate
19 Control was right up my alley.

20 I called Bo. We set up an interview. So I would
21 be working away from the Milwaukee region. I was
22 actually hired to work in the Watertown store which is
23 75 miles away from home, but it's less work on my knees.

24 Q Did your brother, Robert Rivera, have anything to
25 do with you getting the Climate Control job?

1 A No. My brother has his own job to do. I don't
2 talk to him much. We don't talk about work. That's two
3 different areas.

4 Q Did anyone in the General Tool Division help you
5 to get that job in Climate Control?

6 A No, I -- no.

7 Q All right. When did you hear that you were able
8 to -- that you did get the job in Climate Control?

9 A I'm sorry, I can't remember the date, but it was
10 in the summer. The Climate Control area was in August
11 sometime, I believe.

12 Q You mentioned a knee replacement. Was that --
13 was that around the time that you moved from General
14 Tool to Climate Control?

15 A No. I did try to work at the General Tools for a
16 little bit with it, and it was just very painful.

17 Q And when did you learn about the Franksville
18 profit center being reorganized?

19 A It was after I came back from the hospital. I
20 fell down and broke two ribs prior to -- my last day
21 actually would have been the last day I was working. I
22 fell down and broke two ribs guarding the machine, and I
23 didn't even know anything about it, so it would have
24 been after that. Two weeks after my last day. I don't
25 really have a time frame, but it was definitely right

1 after it happened, because when I went back to doing
2 paperwork, I found out they were restructured.

3 Q And who informed you?

4 A I think everybody at the counter, I believe,
5 because I came in with the paperwork, and I asked
6 where's everybody at, and that's at that time when all
7 this happened.

8 Q When you say the people at the counter, who are
9 you referring to?

10 A Dustin I believe was there. Bryan was not there
11 at that present time. Dustin. There's another -- I
12 forgot his name. I worked with him for a while. I'm
13 sorry.

14 Q His position?

15 A Dustin was our CSR, he was our counter guy, and
16 you walk into the front door, so he's the first one to
17 greet when you come in.

18 Q Sir, are you aware a decertification petition was
19 filed with the National Labor Relations Board?

20 A Yes. That was me. I filed that.

21 Q How did you know what to do?

22 A Well, it's kind of funny because I really didn't
23 know. I came to this building here. I went online to
24 figure out how to -- you know, where to start, and I got
25 a phone number for the NLRB, and I talked to a lady or a

1 gentleman from the office over here around the corner.

2 I'm sorry, I'm not very familiar with this
3 building or the people here. The lady on the phone said
4 she'd walk me through every step I needed to know how to
5 do this, and if I had any questions, that she would help
6 me fill out the paperwork through -- she did most of it
7 by the phone, and she said she could mail me a copy of
8 anything I needed help with. And then I talked to a
9 gentleman from the NLRB about it.

10 And the NLRB actually helped me with the paper --
11 you know, how to do it, and she walked me step-by-step
12 through it, and then I pretty much filed it like that
13 through them. I didn't have a clue at first until I
14 talked to the NLRB, and they pretty much helped me about
15 it and told me what I had to do. They said I needed at
16 least three signatures, and I was able to -- or two
17 signatures and myself would be enough to file -- to file
18 a petition for that.

19 Q Okay. So the other two signatures, how did you
20 go about getting signatures?

21 A Well, I was on the phone actually with the NLRB
22 when I asked -- I was talking to the NLRB, and they told
23 me what I had to do, and they said I had to do it on my
24 own, you know, my own writing, ask for a reelection, ask
25 would they be willing to participate in a reelection,

1 and that's not a -- that's what the person on the phone
2 asked me to write down, and I wrote it all down, and she
3 said make sure I got the date on there, and the
4 signatures have to be clear and legible, and I said
5 okay, and then I wrote out the paper.

6 I went up to pretty much everybody there that was
7 working at that day, and I needed two signatures, and I
8 figured I didn't really need to push it past that. And
9 the papers stated that -- I don't have a copy of it.
10 I'm sure the NLRB has a copy of it somewhere. And it
11 was a very blunt, we're looking -- I would like to know
12 if you're willing to sign for a reelection.

13 And as I explained to the people, everyone that I
14 talked to, this is on your own. I need you to be a
15 hundred percent sure. This is not a formal contract.
16 This is just stating that you're willing to take it back
17 to the table.

18 And I also explained to everyone at that present
19 time, at the time of vote, you do whatever you want, all
20 I'm asking for is your signature to help me bring it
21 back to the table so we have an open election and see if
22 we can remove the union, so to speak, from our facility,
23 and I said but this is not saying that, because you sign
24 this, the union's not going to be there. We have to go
25 through a reelection. You will have the right to vote

1 any way you want. I says you don't have to sign this
2 paper as well. I said this is all on you at any time.
3 I talked to Ray --

4 MR. WIESE: I'm going to object, your Honor. I
5 don't want to -- I don't want to get into testimony
6 about who signed decertification paperwork.

7 JUDGE ROSAS: Ray is who?

8 THE WITNESS: Sorry?

9 MS. HILL: Last name.

10 JUDGE ROSAS: That's another employee?

11 THE WITNESS: Yes, sir.

12 MS. HILL: Yeah, he testified in December.

13 JUDGE ROSAS: Ray testified in December?

14 MS. HILL: Yes.

15 JUDGE ROSAS: Hold on a second.

16 MS. HILL: Could you give his last name.

17 JUDGE ROSAS: What's the last name?

18 THE WITNESS: Guzman?

19 MS. HILL: Gutierrez.

20 THE WITNESS: Gutierrez. Sorry.

21 JUDGE ROSAS: He was called by the General
22 Counsel?

23 MS. HILL: I believe so.

24 MR. WIESE: Yes, yes, he was called, your Honor.

25 JUDGE ROSAS: Okay. I'm going to allow some

1 leeway here since there was testimony that was elicited
2 by the General Counsel. I don't have the specific
3 questions that were asked, but to the extent that any of
4 the hearsay that's to be elicited from this questioning
5 is corroborated is one thing, it's also useful, for one,
6 to compare it to the testimony previously as far as what
7 the witness called by the General Counsel testified to.

8 So I'm going to overrule the objection. Again,
9 with respect to any hearsay, any weight ultimately given
10 to it will depend on corroboration in the record.
11 Overruled.

12 MR. WIESE: Your Honor, just a quick
13 clarification. So with regard to testimony about
14 employees who signed the decertification paper, is that
15 limited solely to employees who already testified here?
16 Because that's what we're getting into here.

17 JUDGE ROSAS: So when we're dealing with hearsay
18 in these proceedings, only reliable hearsay is
19 admissible. Reliable can be -- reliability can be
20 established in any one of several ways, most commonly by
21 virtue of the out-of-court proponent in a statement
22 having been cross-examined. Sometimes there's
23 documentation, something else.

24 I mean I'm not going to provide a definitive list
25 of what it might be, but I think -- I think the subject

1 matter was generally addressed by the General Counsel,
2 so I'm going to provide some leeway here, and we'll see
3 where it all falls.

4 MR. WIESE: And, your Honor, just to clarify, my
5 objection is not to any hearsay portion of his
6 testimony. My objection is to disclosing Section 7
7 activity by employees in the context of an open hearing.
8 I mean that's --

9 JUDGE ROSAS: With respect to the
10 decertification?

11 MR. WIESE: With respect to who signed a
12 decertification petition.

13 MS. HILL: Your Honor, if I may. May I?

14 JUDGE ROSAS: Uh-huh.

15 MS. HILL: All right. With respect to
16 Mr. Gutierrez, he raised some very serious allegations
17 about his signature on the petition. He --

18 MR. WIESE: That are not the subject of this case
19 here today.

20 MS. HILL: Well --

21 MR. WIESE: That was a charge that was filed and
22 investigated and --

23 JUDGE ROSAS: The -- go ahead. I'm not going to
24 get into the focus of his testimony with respect to the
25 paperwork that was on the wall. But anyway, Counsel,

1 complete your statement.

2 MS. HILL: Okay. It was basically -- that was
3 one of the prongs of his testimony. He also indicated
4 that there was pressure put on him to do various things,
5 and he identified --

6 JUDGE ROSAS: By his supervisor.

7 MS. HILL: By his supervisor. Also some pressure
8 put on him by Mr. Rivera, Mario Rivera, not Mr. Robert
9 Rivera.

10 JUDGE ROSAS: All right. You know what, I'm
11 going to overrule the objection.

12 You can answer. Do you recall the question?

13 THE WITNESS: Yes. We -- excuse me, sir, if you
14 want, I won't mention any names, but I went to --

15 JUDGE ROSAS: What was the question? Hold on.
16 What was the question?

17 MS. HILL: Okay. Do you want to repeat the
18 question.

19 (Record read as follows:

20 "Question: So the other two signatures, how
21 did you go about getting signatures?")

22 JUDGE ROSAS: The question was how did you get
23 the signatures, okay. So you want to ask him how did he
24 get the signatures?

25 MS. HILL: That was the question.

1 JUDGE ROSAS: So can you talk generally about the
2 process by which --

3 THE WITNESS: Yes.

4 JUDGE ROSAS: -- you went to get the signatures
5 without first divulging the conversation that you had
6 with any individuals. If counsel wants to pursue that,
7 then that would be the next question. But just how did
8 you go about it?

9 THE WITNESS: Okay, sir. I went to the employees
10 on my own with the paper I wrote out, and I asked
11 everyone that I'm filing for a petition, I need to get
12 signatures, would you be willing to sign this, this
13 isn't -- and there's a long answer that goes along with
14 that which means you're not responsible at the time of
15 the election, this is just to get your signature on the
16 paperwork to have me open up the -- the petition so we
17 can go back to the table, sir.

18 BY MS. HILL:

19 Q Okay. Did you threaten any of the employees to
20 sign, sir?

21 A No. I asked.

22 Q And did Mr. Bogardus ask you to get the paperwork
23 to prepare that decertification?

24 A No. Mr. Bogardus was never involved. This was
25 me and the NLRB was the one who told me what to do. The

1 people in the office next door is the ones who told me
2 what to do and how to do it. They didn't know I was
3 coming until I told them that I filed the paperwork with
4 the NLRB.

5 Q Did Mr. Bryan Anderson ask you to file any of the
6 paperwork with the NLRB?

7 A No.

8 Q All right. Now, sir, there are two binders in
9 front of you.

10 A Yes, ma'am.

11 Q I would like you to look at the black binder,
12 sir, and if you would look at Respondent's Exhibit No.
13 10, sir.

14 A From the National Labor Relations Board?

15 Q Yes, sir.

16 A Yes.

17 Q All right. Now, if you would please look at --
18 I'm trying to get the page. If you'd look at the lower
19 right-hand corner, there's a series of numbers and
20 letters, and at the very end you'll see 1502. Would you
21 go to that page, sir.

22 JUDGE ROSAS: What's the exhibit?

23 MS. HILL: This is Respondent's 10, sir. This
24 was used before in a previous witness.

25 THE WITNESS: Respondent's 10, would that be the

1 Bryan Anderson?

2 BY MS. HILL:

3 Q 1502. At the very top, you'll see an "RD
4 Petition" typed out there.

5 May I approach, your Honor? No. You will.

6 Okay. Thank you, sir.

7 I'll give you a moment to look at that, sir.

8 A Yes, ma'am.

9 Q All right. Do you recognize this page, sir?

10 A Yes.

11 Q Is any of the handwriting and printing on this
12 document yours, sir?

13 A Yes. My signature, my title and the date.

14 Q All right.

15 A And the date for the election. I'm sorry. The
16 date -- the date for the -- the election date, that was
17 what came in the mail that I gave to Bryan so we could
18 post for the company for everyone, because we have to do
19 that. That's what I was told by one of these guys.

20 Q When you say "one of these guys," do you mean the
21 NLRB?

22 A Yeah. I don't know if they're here or not. It
23 was on the phone. I'm sorry.

24 Q So looking at Section 11, that's your handwriting
25 in Section 11b, c and d, correct?

1 A Yes, ma'am. That's the date.

2 Q And then looking up near the top in Section 3a,
3 "Bryan Anderson PCM 776," is that your handwriting, sir?

4 A No.

5 Q Do you recognize that handwriting?

6 A Yeah. That's Bryan's handwriting.

7 Q Okay. And the e-mail address there, do you
8 recognize that handwriting?

9 A Yes.

10 Q And do you recognize -- I'm sorry. You seem to
11 be studying it some more.

12 A Yes. I'm sorry.

13 Q And do you recognize that handwriting, sir?

14 A Yes.

15 Q Okay. Is it your handwriting?

16 A No.

17 Q The pages that are in this Exhibit 10, did you
18 receive these, sir?

19 A I believe this is the one -- yeah, this is I
20 believe what they sent me in the mail.

21 Q Okay. Well, looking back at the page with your
22 handwriting on it, sir --

23 A Yes.

24 Q -- did you put your handwriting on there while
25 you were in the NLRB office?

1 A It was twice I was here, I believe I came here
2 twice I filled out paperwork. I couldn't tell you which
3 one was which.

4 Q Okay. Thank you. Now, sir, I know you're going
5 to be asked this on cross examination, so I'll get it
6 upfront.

7 Did you receive a subpoena to appear here today?

8 A A subpoena, yes.

9 Q A piece of paper?

10 A Yes.

11 Q Yes. All right. Did I meet with you to prepare
12 you for today?

13 A I don't know what you --

14 Q Oh, did I meet with you prior to today?

15 A Yes.

16 Q Okay. At that meeting, did I ask you if -- did I
17 tell you you did not have to talk to me?

18 A Yes.

19 Q Did I tell you that you could hire an attorney to
20 represent you?

21 A Yes.

22 Q Did you indicate to me that you wanted me to
23 represent you?

24 A Yes.

25 Q Did you -- and you're an hourly employee,

1 correct?

2 A Yes.

3 Q And the division that you work in, is it union or
4 nonunion?

5 A Nonunion.

6 Q Did your location already have a union election?

7 A Climate Control?

8 Q Climate Control, yes, sir.

9 A I wouldn't know because I just got there. I
10 can't elaborate on that.

11 Q So you don't remember if there was one there
12 before you came?

13 A No.

14 Q Okay. Would you please indicate what
15 certifications you have that make you qualified to work
16 in Climate Control, sir?

17 A Well, I was in -- as I said earlier in testimony,
18 I was the heating guy for the general stores before they
19 had a Climate Control center. Before they bought this
20 company called Temp-Air, which is a heating company
21 Sunbelt purchased, I was the guy that on the freeways
22 fixing the heaters for the general stores. So when they
23 opened up the Climate Control center, that was a flag
24 that I already knew what I was doing. And I worked for
25 Lincoln Contractors prior to that for 14 years, and

1 Lincoln Contractors is known all over the state as a
2 heating -- just a heating contractor for the
3 construction.

4 Q So do you have licenses or certifications for --

5 A I have a -- I was certified through Lincoln as a
6 gas line installer, and I was looking for my card, and I
7 could not find it, but I should be registered as a gas
8 line installer for natural -- you know, to hook up the
9 lines to the -- to buildings, because you have to have a
10 -- you have to be certified in order to tap into a
11 meter.

12 MS. HILL: No further questions at this time. I
13 pass the witness.

14 JUDGE ROSAS: Cross examination?

15 MR. WIESE: Just one minute, your Honor. Off the
16 record.

17 JUDGE ROSAS: Sure.

18 (Pause in the proceedings.)

19 MR. WIESE: I'm ready to go.

20 JUDGE ROSAS: Okay.

21 CROSS EXAMINATION

22 BY MR. WIESE:

23 Q Good morning, Mr. Rivera.

24 A Good morning.

25 Q My name is Tyler Wiese. I'm an attorney with the

1 National Labor Relations Board. I'm going to ask you a
2 couple questions.

3 So first, picking up with your conversation that
4 you referenced with Ms. Hill regarding your testimony,
5 when did that conversation take place?

6 A What do you mean? I'm sorry.

7 Q When did you talk with Ms. Hill about your
8 testimony today?

9 A The testimony today?

10 Q Yeah.

11 A Actually I don't recall the date. I don't recall
12 the date. About a week.

13 Q About a week ago?

14 A So to speak, right.

15 Q Where did that conversation take place?

16 A Oh, at my shop.

17 Q At the Waukesha Climate Control?

18 A Climate Control center.

19 Q Did Ms. Hill advise you or tell you why she was
20 asking you questions?

21 A She said that --

22 MS. HILL: Ah, I'm going to -- I thought we laid
23 the foundation that he asked me to be his attorney, and
24 I believe that you prefaced it about the -- preparing
25 for the hearing today.

1 JUDGE ROSAS: Overruled.

2 You can answer.

3 MS. HILL: Go ahead.

4 THE WITNESS: I'm sorry. I kind of got lost
5 there for a minute.

6 BY MR. WIESE:

7 Q I can repeat the question if you'd like.

8 A Yes, please. Thank you.

9 Q Did Ms. Hill tell you why she was questioning
10 you?

11 A She just said it would be a series of questions
12 from both you guys.

13 Q Did she say what the questions were going to be
14 about?

15 A No.

16 Q Did Ms. Hill tell you that your answers to her
17 questions would not affect your job at Sunbelt?

18 A My job was never questioned about anything from
19 anyone in the company.

20 Q Did Ms. Hill tell you that during your
21 conversation with her?

22 A No.

23 Q In preparation for testifying today, did you
24 speak with anybody else regarding your testimony besides
25 Ms. Hill?

1 A No.

2 Q Did you review any documents in preparation for
3 your testimony today?

4 A No. This is the first I've seen this.

5 Q You didn't look at any transcripts prior to your
6 testimony today?

7 A No.

8 Q So you mentioned that you were a skid-steer
9 mechanic for a while, is that correct?

10 A Yes, sir.

11 Q And was that with Sunbelt?

12 A Sunbelt Rentals, 776.

13 Q That was at the Franksville facility?

14 A Yes.

15 Q And your job was to fix skid-steers?

16 A Anything. Pretty much any of the equipment that
17 came through, it's our job to fix. We really didn't
18 have a special assignment to a particular machine. One
19 day you're fixing a lawnmower, the next minute you're
20 fixing a bulldozer. Whatever it took.

21 Q And skid-steers were one of the pieces of
22 equipment that you would regularly fix at the
23 Franksville facility?

24 A I worked on them, yes. Well, we all worked on
25 them.

1 Q When you say "we" there, you're talking about the
2 mechanics at Franksville?

3 A Yes, sir, I am.

4 Q You talked a little bit about an individual named
5 Bo Bogardus. Do you recall that?

6 A Yes, sir.

7 Q Did you ever talk with Mr. Bogardus about the
8 decertification petition that you filed with the NLRB?

9 A Did I talk to him? I didn't talk to him. I
10 filed the petition, and the paper came in the mail, and
11 I gave the paper to Bryan or Bo, I can't recall which
12 one, but I bring them the paper that I was sent after
13 the signatures were filed to -- I don't want to make the
14 question too long because last time you got kind of mad.
15 I gave Bo and Bryan the paper that was given to me by
16 you -- by the NLRB. That's you, right?

17 Q Yes.

18 A Okay.

19 Q So before you filed the paper --

20 A Before, no.

21 Q -- with the NLRB, did you talk with Mr. Bogardus
22 about decertifying the union?

23 A No.

24 Q You never asked him any questions about how to
25 get rid of the union?

1 A No. I got the answers from you guys. I talked
2 to two people in your company. They should have it on
3 file who I --

4 Q I don't want to get into your conversations about
5 it.

6 A I'm sorry. That's why I thought --

7 Q No, no. That's okay.

8 Nothing further.

9 JUDGE ROSAS: Charging Party?

10 MR. RYAN: Just a couple quick questions.

11 CROSS EXAMINATION

12 BY MR. RYAN:

13 Q Mr. Rivera, if you can open that binder again,
14 the document we were looking at.

15 A This one here?

16 Q Yes.

17 A Chapter 10?

18 Q Yes.

19 A Page five?

20 Q Yes.

21 A Yes, sir.

22 Q I just wanted to make sure I understood the
23 timing and the sequence. You said that the handwriting
24 for Mr. Anderson, that was -- that he filled that in?

25 A Yeah.

1 Q Do you remember if he -- when he filled that in?

2 A It says on the corner the "Date Filed," the 22nd.
3 I honestly don't know. Oh, it had to have been in front
4 of me because I signed it and I dated it myself.

5 Q So he filled that in before you filed the
6 petition?

7 A Not before I filed the petition. This is after
8 the petition was filed. Because I filed the petition,
9 and then I brang it back to the PC and told him what I
10 got.

11 Q Okay. So his name was blank when you --

12 A Yeah.

13 Q And then about two-thirds of the way down where
14 it talks about election details in that Section 11 --

15 A Line "6:00 AM"?

16 Q Yes.

17 A Yes, sir.

18 Q You put in that information?

19 A That's me, yes. That's the time that we set up
20 for that.

21 Q When you say "we set up," who?

22 A I talked to them and asked what would be a
23 convenient time, because I had to ask that it went into
24 what's the procedure of our workload, because you can't
25 have an election when there's work going on and bring

1 people in. The last time when the union -- can I
2 mention the union? Is that okay?

3 Q Uh-huh.

4 A When we had the election, it was organized so it
5 was at a morning where it's not inconveniencing the
6 daily work schedule, and it was early morning as well,
7 so I didn't want to interrupt normal business hours and
8 have somebody miss the election to be fair to everyone
9 that wasn't involved in the signatures. That's what I
10 was thinking of when I tried to make this.

11 Q When you say "we," we came up with this time,
12 who else?

13 A Well, I talked to Bryan, because Bryan was our
14 store manager, and I had to -- I had to get permission
15 to get a decent time where it's not going to affect the
16 business, and he would be the only one who would know
17 what time frame, because we start at staggered hours,
18 and it wouldn't have been fair to have an election
19 without all the employees being able to make it.

20 Q Okay. But that information was in there before
21 you signed the bottom of it?

22 A Yes.

23 MR. RYAN: Thank you very much. I don't have
24 anything further.

25 THE WITNESS: Thank you.

1 JUDGE ROSAS: Any redirect?

2 MS. HILL: No, sir.

3 JUDGE ROSAS: Thank you, sir. You're excused.

4 Please do not discuss your testimony with anyone until
5 you find out from counsel that the case is over. All
6 right?

7 THE WITNESS: Okay. Thank you, sir.

8 JUDGE ROSAS: All right. Have a good day.

9 THE WITNESS: You, too. Stay warm. If you guys
10 need heat, call me. I'm out there all day long.

11 JUDGE ROSAS: All right. Anything else, Counsel,
12 on your case?

13 MS. HILL: His people.

14 JUDGE ROSAS: Your people, okay. Off the record.
15 (Lunch recess.)

16 JUDGE ROSAS: On the record. Respondent.

17 MS. HILL: Sir, there's some noise out there. Do
18 you mind if I -- are those your people out there?

19 MR. WIESE: No.

20 MS. HILL: Do we know who they are?

21 MR. WIESE: I don't know.

22 MS. HILL: All right. The next witness, sir, is
23 again pursuant to a subpoena. It's Mr. Steven Buffalo.

24 MR. WIESE: Your Honor, before Mr. Buffalo gets
25 called to the stand, just a housekeeping item regarding

1 the Johnnie's Poultry issue. I would request leave to
2 amend the complaint to include a similar allegation for
3 Mr. Rivera, and I have drafted a written amendment to
4 the complaint that I'd like to offer at this time.

5 MS. HILL: Could we do this at the end? We have
6 witnesses who are here who are being inconvenienced.

7 JUDGE ROSAS: Well, you're on notice that
8 counsel's going to do this, so --

9 MS. HILL: Yeah, we know.

10 JUDGE ROSAS: Yes, that's fine.

11 MS. HILL: After the witnesses.

12 JUDGE ROSAS: That's fine. That's fine.

13 MS. HILL: I've been told repeatedly by Mr. Ryan
14 they're busy.

15 JUDGE ROSAS: Absolutely.

16 So please raise your right hand.

17 (Whereupon,

18 STEVEN BUFFALO,
19 was called as a witness by and on behalf of the
20 Respondent and, after having been duly sworn, was
21 examined and testified as follows:)

22 THE WITNESS: I do.

23 JUDGE ROSAS: Please have a seat. Please state
24 and spell your name and provide us with an address.

25 THE WITNESS: Steven Buffalo, S-T-E-V-E-N

1 B-U-F-F-A-L-O. 26504 Roosevelt Lane, Wind Lake,
2 Wisconsin.

3 DIRECT EXAMINATION

4 BY MS. HILL:

5 Q Thank you, sir. Who is your employer?

6 A Operating Engineers Local 139.

7 Q How long have you worked for the 139?

8 A Fifteen years.

9 Q What positions have you held over those 15 years?

10 A Business agent, district manager, and current
11 position is chief of staff and financial secretary.

12 Q How long have you held your current position?

13 A Four years.

14 Q Were you part of the union's negotiation team
15 with respect to the Franksville profit center for
16 Sunbelt Rentals?

17 A Yes.

18 Q Did you miss any of the negotiation sessions?

19 A There was -- there was a couple meetings that I
20 missed.

21 Q All right. There are two binders in front of
22 you, sir. One is blue. One is black. What I would
23 like you to do right now, sir, is turn to the black
24 binder. Turn to the very last exhibit there that
25 there's a tab with the No. 40. On the first page at the

1 bottom, do you see R 40?

2 A Uh-huh.

3 Q All right. And the number is 571 down there.

4 A Correct.

5 Q All right. What I'm going to be doing when I ask
6 you questions is directing your attention to those
7 numbers at the bottom right. Do you understand?

8 A Uh-huh.

9 Q Thank you. All right. The first general
10 question is would you look at from starting at 572 to
11 the very end, 693, of this exhibit, sir.

12 And just so you know what I'm going to be asking
13 is is all of the handwriting on these pages yours, sir?

14 A I can't quite read the numbers on the bottom
15 because they're all blacked out on this one, but --

16 MS. HILL: May I approach, please?

17 JUDGE ROSAS: Hold on.

18 MS. HILL: Oh, okay. Is there a copy problem?

19 JUDGE ROSAS: That would be the page following
20 686, so presumably 687.

21 MS. HILL: Oh, because of the page, yes.

22 THE WITNESS: All of the handwritten notes.

23 BY MS. HILL:

24 Q Okay. So all the handwritten notes are yours?

25 A Yes.

1 Q And do you recognize this document?

2 A Yes.

3 Q And what is this, all these pages?

4 A They're negotiations.

5 Q Your copy?

6 A A copy of -- yeah, the handouts of what I
7 received and my notes.

8 Q And your notes, correct?

9 A (Nods head.)

10 MS. HILL: Your Honor, at this time, it seems a
11 little strange to ask this question, but this witness is
12 considered adverse, and I may ask leading questions.

13 JUDGE ROSAS: Absolutely. Go ahead.

14 MS. HILL: Thanks so much.

15 BY MS. HILL:

16 Q With respect to -- is there any document, any
17 page in this exhibit that you don't recognize as being
18 part of your negotiation notes with the proposals, sir?

19 A To the extent of what I'm seeing here, no. These
20 are all my notes.

21 Q All of them.

22 Now, your Honor, at this point I would move to
23 admit Respondent's Exhibit 40 into evidence.

24 MR. WIESE: No objection.

25 MR. RYAN: No objection.

1 JUDGE ROSAS: Respondent's 40 is received.

2 MS. HILL: Thank you.

3 (Respondent's 40 was received.)

4 BY MS. HILL:

5 Q Sir, 572, what is this, sir?

6 A That is the Negotiating Committee Ground Rules.

7 Q At the bottom, the handwriting there that you
8 already said is yours, what does it state?

9 A "Handed out."

10 Q So this was handed out when?

11 A On 5/22.

12 Q 2018?

13 A Yep.

14 Q Now No. 4, why is that number circled, sir?

15 A Well, because we had asked for -- obviously we
16 asked for a 20-minute caucus throughout the
17 negotiations, and that didn't happen.

18 Q Okay. Which of the negotiation sessions was this
19 handed out at?

20 A It was the first one.

21 Q The first one. So you didn't have any caucuses
22 at that time, correct?

23 A (Shakes head.)

24 Q Verbal, please.

25 A No.

1 Q Okay. With respect to No. 4, so when did you
2 circle that?

3 A I probably circled it after your first caucus.

4 Q Sir, are you guessing?

5 A No.

6 Q All right. So you said it was after the first
7 caucus?

8 A Yeah.

9 Q Why did you scratch out No. 13?

10 A You know what, I don't recall, Pat.

11 Q No. 7, it states, "The parties shall decide all
12 language proposals before discussing wages." Is that
13 correct?

14 A Yes.

15 Q Who did you hand this out to?

16 A To Sunbelt and yourself, Boregard [sic], Jason,
17 and I think his name was Bryan.

18 Q Mr. Anderson?

19 A Yes. And obviously our side had it.

20 Q At this point in the negotiations, did the union
21 ask -- at the time that this was handed out, did the
22 union ask that all proposals not be sent by e-mail?

23 A Yes.

24 Q And why was that?

25 A Because we typically don't negotiate through

1 e-mails.

2 Q Could documents, proposals be submitted to the
3 other side via regular U.S. Mail?

4 A No.

5 Q Was that discussed?

6 A No.

7 Q And why not?

8 A I don't think it was brought up.

9 Q Did the union's caucuses last longer than 20
10 minutes?

11 A I'm sure there was a few, but it wasn't to the
12 extent of 45 minutes to an hour.

13 Q And the negotiation sessions averaged -- were
14 supposed to average approximately two hours, correct?

15 A I think that's what we asked for.

16 Q But the sessions lasted longer than just two
17 hours, correct?

18 A The negotiating sessions?

19 Q Yes, sir.

20 A Some did. Some didn't.

21 Q Did Sunbelt agree to what is entitled Negotiating
22 Committee Ground Rules?

23 A No.

24 Q Did they explain why?

25 A I don't recall.

1 Q No. 11 states, "No public statement shall be made
2 by either side until final agreement or impasse is
3 reached."

4 The union never declared an impasse, correct?

5 A No.

6 Q That is incorrect or correct?

7 A No. That is correct, we never -- no, we never
8 came to an impasse.

9 Q And -- by the way, what was your role on the
10 negotiating team?

11 A I was assisting as the negotiating team.

12 Q So who was the head of the negotiating team?

13 A That would be Mike Ervin.

14 Q Now, sir, if you would please look in the blue
15 binder. Keep the black one open, please. If you'd look
16 in the blue binder and look at Exhibit -- and this is
17 going to be called General Counsel Exhibit 15, sir.

18 A I got it.

19 Q Okay. All right. Negotiating Committee Ground
20 Rules, what is this, sir?

21 A That is the Negotiating Committee Ground Rules
22 that we handed out to Sunbelt.

23 Q All right, sir. If you would please look at No.
24 3 on General Counsel Exhibit No. 15, and it states,
25 "Meetings will alternate between Janesville Sand &

1 Gravel and Union locations of choice."

2 A Uh-huh, yes.

3 Q Okay. Would you look at Respondent's Exhibit 40,
4 No. 3, Page 572. Is the language there identical?

5 A No.

6 Q Why not?

7 A Because we were negotiating with Sunbelt, and we
8 were -- then we were negotiating with Janesville Sand &
9 Gravel.

10 Q But, sir, you already said that General Counsel
11 Exhibit 15 was handed out to Sunbelt. Which one, was it
12 General Counsel Exhibit 15 or was it Respondent's
13 Exhibit 40?

14 MR. WIESE: Objection, your Honor, relevance.

15 MS. HILL: Big relevance, sir.

16 JUDGE ROSAS: Do you know the other one she's
17 referring to?

18 THE WITNESS: The first one?

19 JUDGE ROSAS: Respondent's 40.

20 MS. HILL: Right, Page 572.

21 THE WITNESS: Yeah, that --

22 BY MS. HILL:

23 Q Those are not identical ground rules, correct?

24 A No, they're not. Well, when it -- when it comes
25 obviously to the names of the companies, Janesville Sand

1 & Gravel and Sunbelt.

2 Q Well, sir, isn't it true that General Counsel's
3 Exhibit 15 was the one that was actually handed out to
4 Sunbelt's negotiating team?

5 A I can't recall, Pat.

6 Q And you're -- the copy from your notes, No. 572,
7 was never handed out to Sunbelt, was it?

8 A It was.

9 Q Sir, do you recall a discussion during
10 negotiations on that first day in May of 2018 regarding
11 Janesville Sand & Gravel and that was not relevant to
12 Sunbelt?

13 A I don't recall, Pat.

14 Q Now, sir, I want you to look again at your notes
15 that you said were yours from 540 -- excuse me, in
16 Exhibit 40, Respondent's Exhibit 40, and will you
17 confirm that these were the actual proposals and
18 documents that were exchanged between the parties?

19 MR. RYAN: Your Honor, I'm going to object.
20 That's a rather broad question.

21 JUDGE ROSAS: The proposals that are contained
22 within Pages 571 to 693?

23 MS. HILL: Well, I have skipped 571 because that
24 seems to be the union cover sheet, sir, so I started at
25 572.

1 JUDGE ROSAS: Take your time and look through it
2 and if you know.

3 THE WITNESS: I mean obviously there are some
4 pages that I did not write on, but for the most part,
5 it's my handwriting and it's my notes.

6 BY MS. HILL:

7 Q If you would please look at Respondent's Exhibit
8 No. 40, Page 588.

9 A Uh-huh.

10 Q And what is this, sir?

11 A Dues and assessments to the union.

12 Q Was this a proposal from Sunbelt to the union?

13 A Yes.

14 Q And did Sunbelt provide a justification for this?

15 A I don't recall, Pat.

16 Q Would you agree that this provision, this
17 proposal is an important part of the Collective
18 Bargaining Agreement?

19 A They're all important parts, Pat.

20 Q I'm asking, sir -- move to strike his response
21 and ask him to respond to my question, sir.

22 JUDGE ROSAS: Given the nature of the question,
23 I'll accept the answer.

24 BY MS. HILL:

25 Q Then I'll repeat my question. Is this particular

1 proposal an important aspect of the Collective
2 Bargaining Agreement?

3 A Yes.

4 Q Was it a waste of time for Sunbelt to get this
5 proposal to the union?

6 A No.

7 Q Was this proposal ultimately TA'd by the parties?

8 A Only because it's not hand -- my -- my
9 handwritten note on there says just "ok." Pat, I can't
10 recall if it was TA'd or not.

11 Q Looking at 589, sir. Is this a proposal from
12 Sunbelt to the union?

13 A Yes, it is.

14 Q Did Sunbelt explain the reason for this proposal?

15 A Yes, they did.

16 Q What was that reason?

17 A Safety.

18 Q And was this an important proposal for the
19 Collective Bargaining Agreement?

20 A Yes, it is.

21 Q Did the parties agree to this proposal?

22 A That I can't recall because I don't have anything
23 written on that page.

24 Q 590. Was this one of Sunbelt's proposals?

25 A Yes.

1 Q And Sunbelt explained the reason for this
2 proposal, correct?

3 A Yes.

4 Q What is your handwriting next to the typed
5 proposal?

6 A It says "safety." It was rules and safety, and I
7 okayed it.

8 Q Was this proposal ultimately agreed to by the
9 parties?

10 A I don't recall.

11 Q 591, sir. This is Sunbelt's proposal, correct?

12 A Yes.

13 Q And Sunbelt explained the reason for this
14 proposal, correct?

15 A Yes, they did.

16 Q And this was given to the union on May 22nd,
17 2018, correct?

18 A Correct.

19 Q Again, this was another important part of the
20 Collective Bargaining Agreement, correct?

21 A Can I just take a second to read it?

22 Q Sure.

23 A Yes.

24 Q All right. If you would please look at 592. And
25 before I ask questions, please read this and then look

1 up, sir.

2 Do you recognize this proposal as coming from
3 Sunbelt?

4 A Yep.

5 Q Did Sunbelt explain the reason for this proposal,
6 sir?

7 A Yes.

8 Q Was this proposal ultimately agreed to by the
9 parties?

10 A No.

11 Q Was a similar agreement ultimately decided --
12 agreed to by the parties, sir?

13 A You know, Pat, I believe there was. I can't -- I
14 can't say a good yes or no.

15 Q Would you please read what your handwriting is
16 just above the "Local 139" typed at the bottom of the
17 page, sir.

18 A Oh, on "Sept 13, 9:00" o'clock.

19 Q Oh, "9:00 am"?

20 A Yeah, "9:00 am." I don't know what that was for
21 to be honest.

22 Q 593, sir. This was one of Sunbelt's proposals,
23 correct?

24 A Yes.

25 Q It was given to the union on May 26th, 2018,

1 correct?

2 A Yes.

3 Q What proposal did the union give Sunbelt on
4 May -- for the May negotiation session and for the June
5 26th negotiation session?

6 A Gee, I don't recall, Pat.

7 Q And you don't see anything in your file folder
8 here that's been marked as Respondent's Exhibit 40?

9 A No.

10 Q Looking still at 593, sir. Did Sunbelt provide
11 an explanation or a reasoning or justification for this
12 proposal, sir?

13 A Yeah, yes.

14 Q I see a "TA." Did that mean that on June 26th,
15 2018 the parties agreed to this?

16 A Yes.

17 Q You would agree that this discrimination
18 provision for the Collective Bargaining Agreement was an
19 important part of the agreement, correct?

20 A Yes, yes.

21 Q Looking -- this is going to be a two-page section
22 that I will be asking you questions about, so please
23 review both pages, 594, 595, sir.

24 This was a proposal that was given to the union
25 by Sunbelt on June 26th, 2018, correct?

1 A Yes.

2 Q Would you please look at the handwriting just
3 below and read it out loud, please, at "6-26-18" on 594.

4 A I scribbled "will counter," and then --

5 Q And to the right of that.

6 A "Let's talk to legal. Need to run the numbers."
7 And "No," we didn't TA it.

8 Q On that day?

9 A On that day.

10 Q Ultimately did the parties agree to a
11 paid-time-off provision for the Collective Bargaining
12 Agreement?

13 A No.

14 Q With respect to 595, the writing there, what does
15 that reflect below the final typed line there?

16 A Obviously we wanted to replace it with our
17 proposal.

18 Q And what was your proposal?

19 A I can't recall, Pat.

20 Q Well, sir, is there a document in your file there
21 in front of you as Respondent's 40 that would refresh
22 your recollection, sir?

23 MR. RYAN: Your Honor, the witness has answered
24 the question.

25 MS. HILL: I'm trying to refresh his

1 recollection. He said he didn't recall.

2 JUDGE ROSAS: Go ahead.

3 THE WITNESS: I'm confused. Do you want me to
4 look in the blue book or the black book?

5 BY MS. HILL:

6 Q In the black book, because you said your
7 negotiation folder --

8 A Uh-huh.

9 Q -- or file, excuse me, is --

10 A Uh-huh. Oh, I'm sorry. Yeah, I got you.

11 Q -- in this document?

12 A Yes.

13 Q Okay.

14 A Could you please repeat the question again,
15 please.

16 Q Did you counter with this proposal from Sunbelt
17 with a union's proposal for it?

18 A This is 595 we're talking about, right?

19 Q Well, 594 or 595. It's a two-page proposal.

20 A Yeah, we did counter.

21 Q And could you identify the page number.

22 A Page 577.

23 Q Okay. Was 577 given to Sunbelt before or after
24 Sunbelt's proposal?

25 A It was after your proposal to us.

1 Q When?

2 A I don't -- I don't recall, Pat.

3 Q And which proposal or combination of proposals
4 was finally agreed to by the parties?

5 A You know, I don't think we agreed to any of them
6 because it was part of economics.

7 Q Sir, you said you think. Do you know, sir?

8 A No, I don't recall, Pat.

9 Q Sir, if you could please look at 673, 674.

10 A Yes.

11 Q What are those two pages, sir?

12 A Paid Time Off.

13 Q Are those two pages -- do those two pages reflect
14 the Paid Time Off provision of the Collective Bargaining
15 Agreement that the parties agreed to, tentatively agreed
16 to?

17 A I -- I don't recall, Pat.

18 Q 596, sir.

19 A Yes.

20 Q This was a -- this was Sunbelt's proposal to the
21 union, correct?

22 A Yes.

23 Q This provision -- this proposal does not have a
24 date on it. Do you know when it was given to the union?

25 A I don't.

1 Q And you would agree that Management Rights is an
2 important part of any Collective Bargaining Agreement,
3 correct?

4 A It depends.

5 Q Which side of the --

6 A Yes.

7 Q -- table you're on?

8 A Yes.

9 Q All right. But even for the union it can be an
10 important part?

11 A Oh, absolutely.

12 Q All right. It states at the top "Will discuss,
13 get back to them." So who did you have to discuss this
14 with?

15 A Our negotiating team.

16 Q So this was a note to discuss it on the day it
17 was presented or later?

18 A I don't recall that.

19 Q Is there anything in your file folder there that
20 would refresh your recollection as to when you discussed
21 this to get back to Sunbelt on?

22 A I don't think so, Pat.

23 Q 597, sir. This was another proposal from Sunbelt
24 to the union?

25 A Uh-huh, yes.

1 Q And this one's marked as "#6," sir. If you would
2 look to Page 592, this was marked as proposal "#1" for
3 June 26th, 2018.

4 Would "#6" be the proposal that was given to the
5 union on June 26th, 2018?

6 A I would say yes.

7 Q And all of these proposals that we've seen so far
8 for June 26th, 2018 were handed to the union at the
9 beginning of the negotiation session, correct?

10 A At the beginning of the negotiation session?

11 Q On June 26th, 2018.

12 A Yeah, I don't recall that.

13 Q Anything in your file folder that would refresh
14 your recollection, sir?

15 A No.

16 Q 598. This was the seventh proposal given to the
17 union by Sunbelt, correct?

18 A Yes.

19 MR. WIESE: Your Honor, objection, this is
20 cumulative testimony. This is now the sixth, I believe,
21 if I'm counting correctly, the sixth witness who's
22 testifying about these collective bargaining
23 negotiations. I mean there's no reason to have a sixth
24 witness go through blow-by-blow what happened at the
25 bargaining table. If there's specific questions or

1 contradictions that Ms. Hill sees and wants to elicit,
2 then that may be appropriate, but just going through
3 blow-by-blow is cumulative.

4 MS. HILL: No, sir. This is the first time we've
5 seen Mr. Buffalo's notes. He was the, I believe, the
6 senior person at that table. He is the person who, as
7 Mr. Mayfield said, spoke to him in July of 2019. It
8 wasn't the rest of the team. It was Mr. Buffalo.

9 And these were the -- we haven't had other
10 witnesses testify as to when these proposals were given
11 to the union, you know, what was discussed, that type of
12 thing. Even Mr. Ervin's testimony didn't go over this,
13 and this is straight from Mr. Buffalo's file, and I
14 think --

15 JUDGE ROSAS: Hold on one second, hold on.

16 Counsel, are you saying that it's cumulative
17 based on the evidence that the Respondent has produced?

18 MR. WIESE: And that counsel --

19 JUDGE ROSAS: No. Based on the testimony that
20 the Respondent has produced?

21 MR. WIESE: Yes, your Honor. Respondent's called
22 three witnesses to talk about this Collective
23 Bargaining, correct.

24 JUDGE ROSAS: With this specificity? I don't
25 recall with this specificity regarding proposals.

1 MR. WIESE: The opportunity to present testimony
2 regarding the specificity of proposals was available and
3 not taken. I don't understand why we need another
4 witness to go through blow-by-blow his negotiating notes
5 when, again, we've had five witnesses testify about this
6 already.

7 JUDGE ROSAS: The concept you're referring to
8 about the opportunity having passed, that's a whole
9 different situation. That doesn't apply here. This is
10 not cumulative with respect to the Respondent's case.
11 And I don't recall the General Counsel's proposals.

12 I know that Mr. Ervin got into all of the
13 proposals as well, but the Respondent's entitled to
14 explore that on their case. Obviously we're going to
15 have this testimony from Mr. Buffalo, and from here on
16 out, I'll see if there's any further cumulative
17 testimony from the witnesses that will follow to be
18 called by the Respondent. So the objection is
19 overruled.

20 Do you remember the question?

21 THE WITNESS: Please repeat the question.

22 MS. HILL: She's the court reporter. She's going
23 to read it back.

24 (Record read as follows:

25 "Question: This was the seventh proposal given

1 to the union by Sunbelt, correct?

2 Answer: Yes.")

3 BY MS. HILL:

4 Q And we're on 598. Okay?

5 A Uh-huh.

6 Q Sunbelt explained the justification for this
7 proposal, correct?

8 A Yes.

9 Q Could you please read your, and no offense to
10 your handwriting, sir, at the bottom there what you
11 have.

12 A That we TA'd that one, and we agreed to put it in
13 the shop lunch room. And I think the reason we agreed
14 for that so you didn't put it in the men's bathroom or
15 the ladies bathroom where no one could see it.

16 Q But was the -- there was never a discussion about
17 having it in the restrooms, correct?

18 A No, there was no discussion about that.

19 Q Right, because --

20 A But we wanted to be specific as to where we
21 wanted it.

22 Q Right. Wasn't there a discussion about having it
23 in the break room versus near one of the time clock
24 areas in the shop?

25 A I don't recall that, Pat. I don't know where

1 your bulletin boards are in that location.

2 Q Okay. 599, please. And this was the eighth
3 proposal for June 26th, 2018, correct?

4 A Yes.

5 Q And Sunbelt provided a justification for this
6 proposal, correct?

7 A Yes.

8 Q With respect to this proposal, was it ultimately
9 TA'd by the parties?

10 A I can't recall.

11 Q Would you please -- and I apologize, the
12 numbering at the bottom there, and this was produced by
13 the union, it's a little bit cut off, but it looks as if
14 it's "6/26/18" in the upper right-hand corner.

15 A Uh-huh.

16 Q All right. It's your handwriting on this page,
17 correct?

18 A Uh-huh.

19 Q Could you make a verbal, please.

20 A Yes. I'm sorry.

21 Q You misspelled "Sun Belt," correct?

22 A I don't think I did.

23 Q Don't you think it's important to have the
24 employer's name spelled correctly for any Collective
25 Bargaining Agreement?

1 A In my opinion, it is spelled correct.

2 Q In any of -- and in Local 139's proposal to
3 Sunbelt, it referenced Sunbelt as a contractor, correct?

4 A I do recall that coming up, that it was
5 referenced in some -- I can't remember which one, Pat,
6 but I do -- I do recall you corrected us by calling you
7 a contractor.

8 Q And did Sunbelt explain the difference --

9 A Yes.

10 Q -- between Sunbelt and a contractor?

11 A Yes, you did.

12 Q And the union agreed to Sunbelt's request to
13 change it to employer, correct?

14 A Yes.

15 Q If you would look at 602, this would be three
16 pages past what you were looking at, at the very top it
17 appears to have "Jamie" written.

18 A Uh-huh.

19 Q What is your last note below "12:45 Back"?

20 A Boy, I've got terrible handwriting. Put
21 negotiations with Sunbelt. That's the date of 2005. I
22 don't know -- I don't know what my intent was for that.

23 Q Thank you. Please turn to the next page, sir.
24 All right. And the questions are going to be regarding
25 603, 604 and also 605. Now, 603, 604 and 605, these

1 were given to the union by Sunbelt on July 25th, 2018,
2 is that correct?

3 A Yes.

4 Q And Sunbelt provided a reason or justification
5 for each of the proposals here, correct?

6 A Yes.

7 Q Sunbelt provided the union with a copy of its
8 handbook, correct?

9 A I think so, Pat. I'm not quite sure if I have
10 that. I think you might have just given it to the lead
11 negotiator. I'm not sure.

12 Q Okay. With respect to 605, do you recall reading
13 Sunbelt's handbook for purposes of understanding
14 Sunbelt's volunteerism, funeral leave, jury duty,
15 victims of domestic violence and time off for voting
16 policies?

17 A Yes.

18 Q Your handwriting there, could you please read it.

19 A "Volunteerism, for what does your cause on the
20 employment laws. See these policy's! State fed laws
21 for victims of domestic violence."

22 Q Did you have to have this proposal reviewed by
23 anybody before you could TA it?

24 A Yes.

25 Q And who did that?

1 A That would have been the negotiating team.

2 Q No one else?

3 A No.

4 Q Did you ever have any of the proposals reviewed
5 by anyone outside of the negotiating team?

6 A Yes. Our legal department.

7 Q And who's in your legal department?

8 A It would be Pat Ryan.

9 Q That's the entire department?

10 A Baum, Sigman out of Chicago is the entire
11 department.

12 Q 603, it appears that you have written some TAs
13 here, correct?

14 A Yes.

15 Q And these were TA'd on July 25th, 2018?

16 A I'm assuming so, Pat. I'm not sure.

17 Q Anything in your file, Exhibit 40, that would
18 refresh your recollection, sir?

19 A I'm just trying to find the just cause page.

20 Do you know what page that is, Pat.

21 MR. RYAN: No.

22 BY MS. HILL:

23 Q The two Pats can't answer your question.

24 A I know. Okay, I'm sorry, I'll just have to tell
25 you I can't recall, Pat.

1 Q Okay. Please turn to 606 and 607, sir. These
2 notes are from August 8th of 2018, is that correct, sir?

3 A I can't tell you on the first page because I
4 don't have it -- I don't have it marked. My written
5 notes, right?

6 Q Correct, in the upper right-hand corner.

7 A It's not on my sheet.

8 Q Okay. The note that you're looking at, does
9 that -- look at the top -- the left-hand side, a spiral
10 notebook, you see the spiral there, and then
11 "Jamie-Steward."

12 A You said 607?

13 Q It would be 606, I believe, 607. The two pages
14 before 608.

15 A "8/8/18"?

16 Q "8/8/18."

17 A Okay.

18 Q So these are your notes from that date, correct?

19 A Yes.

20 Q And 139 made a verbal counterproposal to
21 Sunbelt's just cause proposal by suggesting felonious
22 acts, correct?

23 A Yes.

24 Q So it was permitted to have the union give verbal
25 proposals, but Sunbelt's proposals had to be in writing,

1 correct?

2 A I don't recall that.

3 Q Do you recall anything from this particular
4 negotiation session that would indicate to you that
5 Sunbelt was unprepared for negotiation, sir?

6 A No.

7 Q Looking at 608, at the top it looks -- it appears
8 to have "8-8-18," correct?

9 A Uh-huh.

10 Q And verbal, please.

11 A Yes. I'm sorry.

12 Q And "TA." So this proposal for Management Rights
13 was ultimately TA'd on August 8th, correct?

14 A Uh-huh, yes.

15 Q 609, sir. And I'm going to be asking you
16 questions on this all the way to 632.

17 609 the parties TA'd on August 30th?

18 A Yes. The only thing we -- we TA'd it with the
19 changes that I had written down on there.

20 Q And which are the changes?

21 A "Replace primary w/ lawful."

22 Q Then 610, was this TA'd that day or just
23 discussed?

24 A That was just discussed.

25 Q And this the union would agree is an important

1 part of any Collective Bargaining Agreement, correct?

2 A Yes.

3 Q Was Sunbelt unprepared for this negotiation
4 session on August 30th, 2018?

5 A Pat, I don't recall.

6 Q Do you recall any session when Sunbelt was
7 unprepared?

8 A All of them.

9 Q Then explain to me how you just said you don't
10 recall them being unprepared for August 30th, but all of
11 them Sunbelt was unprepared for?

12 A Because it was our intention to have written
13 proposals for you, and when we asked for returned
14 written proposals from you, we never got them, and when
15 we did get them, we caucused for, you know, hours on end
16 while you were out making the proposals for us.

17 Q But do you recall Sunbelt giving you proposals at
18 the beginning of any of the negotiation sessions, sir?

19 A Not every session.

20 Q Do you recall Sunbelt giving you written
21 proposals at the beginning of any of the negotiation
22 sessions, sir?

23 A Yes.

24 Q And specifically for this session, do you
25 recall --

1 A I don't recall, Pat.

2 Q 611 to 612. This is another proposal to Sunbelt
3 to the union on August 30th, 2018, correct?

4 A Uh-huh, yes.

5 Q And some of the sections of this article were
6 TA'd that day?

7 A Some of them were, yes.

8 Q Looking at 612, what is the significance of the
9 "ERT" that you have written in the -- about the middle
10 of the page on the right-hand column?

11 A I think that was an acronym that Sunbelt uses.

12 Q For what?

13 A I can't recall. I don't know why I would put
14 "ERT" down there.

15 Q Do you know what it stands for?

16 A I do not know what it stands for.

17 Q Okay. 613, sir. This was another proposal from
18 Sunbelt to the union on August 30th, 2018, correct?

19 A Yes.

20 Q Your notes indicate "Proposed the word changes."
21 What do you mean by that?

22 A I don't know if it was the seven business days --
23 I don't know if it was business days or working -- or
24 working days.

25 Q And again, you have "Sun Belt" misspelled on this

1 page, correct?

2 A I don't think I do, Pat.

3 Q Now, sir, let's go to 614. This was another
4 proposal from Sunbelt to the union, correct?

5 A I didn't spell that one right either I noticed.
6 It is correct, yes.

7 Q And looking just above the date that's typed near
8 the bottom, it indicates "Sunbelt Rentals reserves the
9 right to modify or withdraw this proposal."

10 Would you agree that Sunbelt is spelled properly
11 there?

12 A I don't know.

13 Q And the Article 9, if you look at 615, was
14 ultimately TA'd by the parties?

15 A Yes.

16 Q It was TA'd December 8th, 2018, correct?

17 A Yes. TA'd with the addition of "business."

18 Q Versus?

19 A "Workday."

20 Q With respect to 616, 617, this was a proposal
21 given to the union on August 30th, 2018, correct?

22 A Yes.

23 Q And it was also discussed later on September
24 27th, 2018?

25 A Yes.

1 Q And some of these sections of this article were
2 TA'd by the parties on August 30th, 2018?

3 A Yes.

4 Q And Sunbelt provided the union with the
5 justification for this proposal?

6 A Yes.

7 Q 618, sir, and this continues to 620. This was
8 another proposal from Sunbelt to the union, and this one
9 was August 30th, 2018, correct?

10 A Right.

11 Q This was again discussed September 27th, 2018,
12 correct?

13 A Correct.

14 Q Sections 18.4, 18.5, 18.6, 18.7, 18.8, 18.9,
15 18.10, 18.12 were all TA'd by the parties, correct?

16 A Correct. Can I make a clarification though?

17 Q Yes, sir.

18 A I noticed ERT stands for emergency repair team
19 which is your acronym.

20 Q I'm just asking what it stood for when you had it
21 there.

22 A Now I know what it stands for.

23 Q And what refreshed your recollection, sir?

24 A Because I'd written down the acronym myself,
25 "Emergency Repair Team."

1 Q Where?

2 A On 619, Section --

3 Q That refreshed your recollection, correct?

4 A Yeah. I know it wasn't -- I do know it wasn't
5 our acronym.

6 Q With respect to Sections 18.3, 18.4 that appear
7 on 619, these sections of the article had to be
8 discussed with legal, correct, your legal department,
9 correct?

10 A Wait, go back, you said 18 --

11 Q 18.13, 18.14 on 619.

12 A Yeah, you said 18.3 and 18.4.

13 Q Sorry, sir. 18.13, 18.14.

14 A Yes, it had to be discussed with legal.

15 Q So did you discuss it with legal on -- during
16 this negotiation session on August 30th?

17 A No.

18 Q So that had to delay any further discussion
19 regarding these sections until the next negotiation
20 session?

21 A I don't recall, Pat.

22 Q Well, sir, you couldn't discuss on August -- in
23 August, correct?

24 A No.

25 Q You couldn't -- well, let me put it a different

1 way.

2 Could you discuss these two sections in August of
3 2018 during the negotiation session?

4 A We couldn't discuss it as a negotiating team
5 because there was legal precedence there that -- and I'm
6 not a lawyer, so reading some of that, we needed to get
7 a second opinion.

8 Q So you couldn't call the legal department?

9 A Pat, I can't recall. We might have called. I
10 can't recall. We may have.

11 Q If anything in your notes refreshes your
12 recollection later on, please let me know.

13 A I will.

14 Q 621. This one you were a little bit more
15 specific about. In the upper left-hand corner, it says
16 "Received" at "12:27 pm" on "8-30-18." Now, this is
17 a -- is this a revised proposal from the earlier general
18 proposal that you saw on 618 and 19 and 20?

19 A I think this was a counter to your proposal.

20 Q So when you say -- was this from Sunbelt or from
21 the union?

22 A This is from -- this was from Sunbelt.

23 Q So there were two versions of Article 18 given to
24 the union on -- during the August 30th, 2018 session,
25 correct?

1 A I don't recall, Pat.

2 Q But you agree there were two different ones on
3 that day?

4 A I don't recall.

5 Q Well, looking at the notes, your notes and the
6 language there.

7 A Yes.

8 Q Yes. Are they identical?

9 A Do you actually want me to go back to that
10 Article 18 and read the first one you gave?

11 Q Well, I'm just asking you.

12 JUDGE ROSAS: No. Only if you recall from
13 looking at it.

14 THE WITNESS: I don't recall.

15 BY MS. HILL:

16 Q Looking at 624, sir. This one indicates it was
17 TA'd, correct?

18 A Yes.

19 Q And this was TA'd on 8-30 of 2018?

20 A Yes.

21 Q And you received it -- what's the time there?

22 A I think it's "10:30."

23 Q Sitting here today, you don't know how many
24 versions of this Sunbelt gave to you during that
25 negotiation session, correct?

1 A I do not recall.

2 Q 626. Were the handwritten words that you have
3 written here the union's verbal suggested revisions to
4 this proposal, sir?

5 A No. They were just my notes.

6 Q Did they become verbal proposals to the union --
7 to Sunbelt, excuse me, from the union?

8 A I don't recall, Pat.

9 Q 628, sir. You have notation "Received." What
10 time is that?

11 A It looks like received on "8:58 AM."

12 Q That was on August 30th?

13 A August 30th, '18.

14 Q And there's a notation here of parentheses "(c)
15 Include Step 3." Was that the union's counterproposal?

16 A I do believe.

17 Q And who gave that proposal to Sunbelt?

18 A We did.

19 Q Was it someone in particular?

20 A Oh, Mike Ervin.

21 Q And it was TA'd "10:12" is that?

22 A Yes, uh-huh.

23 Q On the same day.

24 629, this was TA'd also on 8-30 of 2018, correct?

25 A Yes, with the revisions.

1 Q And those revisions were proposals from the
2 union, correct?

3 A Yes.

4 Q And Sunbelt agreed to them?

5 A Yes.

6 Q Did the union provide Sunbelt with a written
7 proposal reflecting your handwritten notes there?

8 A I do believe we did.

9 Q On the same day?

10 A No. The first meeting.

11 Q Okay. So a previous meeting with a negotiation
12 session?

13 A No. It would have been the first meeting.

14 Q Okay. The first negotiation session in May?

15 A Yes.

16 Q Okay. So you're saying that Sunbelt's proposal
17 on 629 was the counter to that one, correct?

18 A Yes.

19 Q But after Sunbelt's proposal here and you have
20 written out "lawful, lawful, lawful" on those areas, did
21 you give this revised proposal to Sunbelt in writing?

22 A I don't recall, Pat.

23 Q 633, sir, to 635. The first two pages, those are
24 your handwritten notes?

25 A Yes.

1 Q And these are your notes from September 27, 2018,
2 and they reflect the various provisions that were
3 discussed, is that correct?

4 A Yes.

5 Q What is the -- at the bottom of 633, you have an
6 asterisk with some language there. What does that say?

7 A I don't know.

8 Q Can you read any of it?

9 A "Add no" -- I don't know -- it's "Equipment
10 Specialist shall displace."

11 Q Was that a proposal?

12 A No, it wasn't a proposal.

13 Q What was it?

14 A It might have been -- it might have been a
15 counter to your proposal.

16 Q And 634, were these your verbal counterproposals
17 to Sunbelt's proposals for those sections?

18 A No.

19 Q What were those?

20 A I think those were just my notes that I was
21 writing down as Mike was speaking.

22 Q Turning to 635. So on September 27, 2018, the
23 articles and sections reflected here that -- where you
24 have the TA in the left column --

25 A Yes.

1 Q -- those were all the proposals that had been
2 TA'd that day, correct?

3 A Yes.

4 JUDGE ROSAS: We've established that that's what
5 his notes indicate all along, so --

6 MS. HILL: Good.

7 JUDGE ROSAS: -- do we need to do that for
8 every -- every page?

9 MS. HILL: Well, I want to make it very clear
10 what was done on each -- in each negotiation session,
11 which negotiation session there was actually TA
12 proposals, because part of the Board -- the Board's
13 issue is that, and I can get the language out, that
14 there weren't proposals -- significant proposals were
15 not generated, the parties did not negotiate and get
16 agreed-upon proposals --

17 JUDGE ROSAS: Yeah, it's fine, it's fine. I
18 recall the allegation that the Respondent wanted to
19 discuss items that had been previously TA'd.

20 MS. HILL: Well, that, plus the underlying one
21 that Sunbelt didn't even make proposals that were
22 significant or part of the -- that became part of the
23 agreement.

24 JUDGE ROSAS: Okay. All right. So let's try to
25 move through this.

1 MS. HILL: I am.

2 BY MS. HILL:

3 Q 638, this is from October 23rd, 2018. These were
4 Sunbelt Rentals' proposals to the union on that day,
5 correct?

6 A Yes.

7 Q You don't have the times for these, correct?

8 A I do not.

9 Q And sitting here today, you don't remember when
10 they were given to the union?

11 A I don't recall.

12 Q On this particular day, did Sunbelt provide the
13 union with a copy of the sample safety quiz?

14 A I think you did.

15 Q And was that a --

16 A Can I retract that?

17 Q Okay.

18 A No, you didn't.

19 Q Did the union ever get a copy of the sample
20 safety quiz?

21 A No.

22 Q Did the union ever get a copy of the take ten?

23 A I don't recall.

24 Q Did the union ever get a copy of the
25 accommodation form for employees?

1 A I don't recall.

2 Q And sitting here today, you still -- you're
3 saying it did not happen that Sunbelt gave the union a
4 copy of the sample quiz, safety quiz?

5 A They didn't give it to me personally, Pat, so
6 I --

7 Q Well, did they give it to someone on the team,
8 someone on the negotiation team?

9 A I don't -- probably.

10 Q When Sunbelt gave the union proposals at the
11 sessions that you attended, did each member of the
12 union's team, negotiation team get a copy?

13 A Of your proposals?

14 Q Of Sunbelt's proposals, yes.

15 A Yes.

16 Q 640, this is from October 25th, 2018, correct?

17 A Yes.

18 Q And this reflects sections of various articles
19 that were TA'd that day?

20 A Yes.

21 Q Over in the left-hand corner next to Article
22 18.11, can you read that, sir.

23 A "Ask Pat" -- I don't know if that -- if it didn't
24 quite get copied, but I think the "Sunbelt" is spelled
25 correctly, and it says "from? Ask Pat for it." Is it

1 spelled correctly?

2 MS. HILL: Mr. Ryan, I had suggested that the
3 original notes be available in case anything was not
4 copied completely. Do you have his original notes so he
5 could look at that?

6 MR. RYAN: I do not have them here.

7 MS. HILL: Okay. Thank you, sir.

8 BY MS. HILL:

9 Q 640 -- let me see, what's next.

10 At some point did the union agree that
11 non-personnel -- non-union personnel could deliver
12 equipment weighing 10,000 pounds or less?

13 A No.

14 Q If you would please look at 640, sir.

15 A Yes.

16 Q And look at 17.7. Is that a "TA" next to that?

17 A Apparently it was open and then we TA'd it.

18 Q So at some point it was TA'd, sir, correct?

19 A Yes.

20 Q And your handwriting underneath says
21 "non-bargaining unit member"?

22 A Yes.

23 Q So you agree that the parties agree that
24 non-union personnel or employees could deliver equipment
25 weighing 10,000 pounds or less, correct?

1 A Rephrase that question again, please.

2 Q 17.7, the parties agreed that non-bargaining unit
3 members or employees for Sunbelt could deliver equipment
4 weighing 10,000 pounds or less, correct?

5 A I'm trying to think if we countered on that, Pat.

6 Q Well, what was the TA provision then?

7 A That's what I'm trying to think, and I can't
8 recall.

9 Q Anything in your note file that would indicate or
10 refresh your recollection, sir?

11 A Maybe. I don't know.

12 Q 642, sir. This provision was TA'd on October
13 23rd, 2018?

14 A Yes.

15 Q And 643, sir, does that refresh your recollection
16 as to whether Sunbelt gave the union a copy of the
17 accommodation request form?

18 A Yes.

19 Q And was that an important document for the union
20 to be aware of?

21 A Yes.

22 Q Was it a waste of time for Sunbelt to do that?

23 A I don't think it was a waste of time, no. Safety
24 is never a waste of time.

25 Q 645, sir, this is "2/21/19," upper right-hand

1 corner.

2 A 645 you said?

3 Q Yes, sir.

4 A Again, my notes are blacked out.

5 Q Well, the numbers are at the bottom, but --

6 A Yes.

7 Q -- if you would look at the next page at 646.

8 A Uh-huh.

9 Q So the page before that, "2/21/19."

10 A Yep.

11 Q And these -- who from the union attended this
12 session?

13 A That day our business manager, Terry McGowan,
14 attended.

15 Q And what was the purpose of Mr. McGowan attending
16 that session?

17 A He wanted to sit in in the negotiations.

18 Q Where in your notes on this day is that
19 reflected?

20 A It says "TMC."

21 Q Thank you. And what, if anything, did
22 Mr. McGowan state during this session?

23 A I think Mr. McGowan was a little perturbed at the
24 fact the way this -- our bargaining unit was being
25 treated by Sunbelt.

1 Q Meaning what?

2 A Meaning the delays, the long caucuses.

3 Q What do you mean by he was perturbed by long
4 caucuses?

5 A Well, obviously Mr. McGowan is the business
6 manager, so we would report to him the ongoing
7 negotiations that we were having and explain to him the
8 difficulties we were having with Sunbelt.

9 Q Who did that reporting, sir?

10 A All of us, the whole negotiating team.

11 Q Okay. Who was the spokesperson during the
12 discussions with Mr. McGowan?

13 A Mr. Mike Ervin.

14 Q You didn't say anything?

15 A I might have said something, Pat.

16 Q Sitting here today, you don't remember?

17 A I don't recall.

18 Q What was the purpose of the bannering, sir?

19 MR. RYAN: Objection, your Honor, relevance.

20 JUDGE ROSAS: There was bannering, correct?

21 THE WITNESS: Yes.

22 JUDGE ROSAS: There was bannering?

23 THE WITNESS: Yes.

24 JUDGE ROSAS: Okay.

25 ///

1 BY MS. HILL:

2 Q And the purpose?

3 JUDGE ROSAS: Sustained.

4 BY MS. HILL:

5 Q Did Mr. McGowan discuss the bannering?

6 A No.

7 Q He discussed the increased economic pressure that
8 was going to be placed on Sunbelt by the union, correct?

9 MR. WIESE: Objection, vague.

10 JUDGE ROSAS: Overruled.

11 If you recall.

12 THE WITNESS: I don't recall.

13 BY MS. HILL:

14 Q Now, Mr. McGowan was -- this wasn't the first
15 time Mr. McGowan attended a negotiation session,
16 correct?

17 A It was the first time with Sunbelt.

18 Q How many times did Mr. McGowan attend negotiation
19 sessions?

20 A With Sunbelt?

21 Q With Sunbelt, yes.

22 A One time.

23 Q Was he -- do you know if he attended a
24 negotiation session that you did not attend?

25 A No, he did not.

1 Q Your notes on -- unfortunately the numbers are
2 not copied. If you look at -- the last number that you
3 can read is 646, that's the next several pages, you
4 can't read the numbers, but those are all your notes
5 from negotiation sessions, correct?

6 A Yes.

7 Q Did you write everything that was said in your
8 notes?

9 A Yes.

10 Q So you didn't eliminate any comment by any of the
11 participants, correct?

12 A No. I'm not the best note-taker there is, but I
13 know I didn't write everything down.

14 Q And Sunbelt did make a proposal regarding wages,
15 correct?

16 A I don't recall, Pat.

17 Q Okay. Perhaps if you would look at 65 -- I think
18 this is 656. Look for 658 and then go back two pages.

19 A In my written notes, right?

20 Q In your handwritten notes, yes, sir.

21 A Uh-huh.

22 Q At the very top, I think it has "6/5/19"?

23 A Yep.

24 Q Okay. And Sunbelt made a proposal regarding
25 wages, correct?

1 A In my notes you did.

2 Q Did it provide a justification for its proposal?

3 A No, not from what I wrote down. Not in my
4 written notes anyway.

5 Q Did you always write down the justification that
6 Sunbelt gave for different proposals?

7 A I did not.

8 Q Sunbelt also made a proposal regarding health
9 insurance, correct?

10 A Yes.

11 Q Sunbelt also made a proposal regarding pension,
12 correct?

13 A Yes.

14 Q And Sunbelt had provided the union with copies of
15 the plan documents relating to the pension and the
16 health insurance, correct?

17 A I do believe you did, Pat.

18 Q And that was before the first negotiation
19 session, correct?

20 A Yes.

21 Q If you would look at the next page, sir, after
22 the "6/5/19," would you please read what you have
23 written here.

24 A "Back from caucus 12:43. Our TA proposal 1-8 are
25 good. We will need counter proposal before we review

1 any more TA's." And then I have written down that "Greg
2 - we will ask for the next date."

3 Q And below that?

4 A "Updated information on health and wages."

5 Q What did that mean?

6 A I think the intent was to get the updated
7 information on our wages and benefits.

8 Q Oh, from your --

9 A From us.

10 Q Okay. All right. If you would please look at
11 658 to 686, sir.

12 A Uh-huh.

13 Q And what is this, sir?

14 A This is the -- this is the agreement between
15 Sunbelt Rentals and International Union of Operating
16 Engineers.

17 Q Who prepared these pages, sir?

18 A We did.

19 Q Was this given to Sunbelt prior to the
20 negotiation session?

21 A This date on 6/5/19?

22 Q This 658 through 686.

23 A Well, it was initially given to you in the
24 Collective Bargaining Agreement in the first meeting.

25 Q That was a proposal, correct?

1 A Right.

2 Q But you agree that 658 through 686 was the
3 union's version of what the two parties had tentatively
4 agreed to, correct?

5 A Yes, yes.

6 Q Now, Sunbelt, at the request of the union, had
7 already prepared a Collective Bargaining Agreement that
8 reflected all of the proposals that the parties had
9 tentatively agreed to, correct?

10 A Yes.

11 Q The difference between Sunbelt's if you want to
12 call it version of the tentatively agreed proposal and
13 this one was each article in the union's version was on
14 a separate page, correct?

15 A Yes.

16 Q Who presented 658 through 686?

17 A Mike Ervin.

18 Q What, if anything, did Sunbelt -- Sunbelt's
19 negotiation team say in response to receiving this
20 document, sir?

21 A Well, initially they said they didn't have
22 anybody on their negotiating team that could -- that had
23 the authority to agree to this.

24 Q Mr. Mayfield was at this session, correct?

25 A Yes, he was.

1 Q Okay. And wasn't it true that Sunbelt wanted to
2 compare the language in this -- the union's version to
3 what Sunbelt had provided to the union earlier in the
4 year?

5 A Yes.

6 Q And Sunbelt requested from Mr. Ervin a Word
7 version of this to do a comparison, correct, to do it
8 quickly?

9 A I don't recall, Pat.

10 Q Did you ever observe any of the Sunbelt's
11 negotiation team in caucus in Mr. Anderson's office when
12 they were conducting any personal work rather than
13 caucusing?

14 A A time or two Bryan was out -- I think he was
15 trying to run the profits there as the manager.

16 Q Okay. Now, let me step back. The Sunbelt
17 negotiation team negotiated in Mr. Anderson's office,
18 correct?

19 A Yes.

20 Q Did you ever observe what was going on in
21 Mr. Anderson's office when Sunbelt was caucusing?

22 A No.

23 Q Since on or about August 29th, 2018, when did the
24 union request to meet at a location other than the
25 Franksville profit center? This is since August 29th,

1 2018, sir.

2 A When did we request it?

3 Q Yes.

4 A I'm sorry. Please rephrase the question.

5 Q Okay. Since on or about August 29th, 2018, when
6 did the union request to meet for negotiations at a
7 location other than Franksville profit center?

8 A It was our first meeting.

9 Q But after that.

10 A I don't think we proposed anything after because
11 Sunbelt was very specific that we had to stay at this
12 profit center because of business, because you had
13 Bryan, your manager, had to run the store while we were
14 negotiating.

15 Q During negotiations or when, sir?

16 A It was during negotiation.

17 Q And it was -- and how often did you personally
18 observe him handling --

19 A Oh, I don't -- I don't -- I can't give a number,
20 but I recall a couple of times.

21 Q A couple of times?

22 A Yeah. You can also make the argument that I seen
23 Boregard [sic] walking around out there, too.

24 Q Walking around where?

25 A Well, beyond -- you've got the desk there, I mean

1 he was -- and I don't know if he was doing any business,
2 but you're asking me if I've seen them walking around
3 out there, and yes.

4 Q No, I didn't ask that question, sir.

5 A All right. Rephrase your question.

6 Q Okay. Look at R 1. It's in the black binder.
7 It's in the first exhibit.

8 A Blue binder?

9 Q Black, black. In the front, R 1.

10 A Yes.

11 Q Okay. That has been entered as an exhibit, it's
12 not to scale, but when you say that Mr. Bogardus was
13 walking around, could you identify on that where he was
14 walking around?

15 A No, I can't.

16 Q Do you recall?

17 A No, I don't recall. You had asked me if I'd seen
18 him, and I just replied yes, I did see him.

19 Q Since on or about August 29th, and keep that R 1
20 out, please, when did Sunbelt's bargaining team members
21 perform work in the shop? Do you see where the "shop"
22 is?

23 A I guess I don't. R 1?

24 Q That drawing, right.

25 A Oh, I'm sorry, yeah, here it is. Yes.

1 Q Okay. I'll ask the question again. Since on or
2 about August 29th, 2018, when did Sunbelt's bargaining
3 team members perform work in the shop? Do you see
4 where -- it indicates where the "shop" is?

5 A I don't think any -- I don't recall anybody
6 working in the shop.

7 Q Did you -- do you have any first-hand information
8 regarding the allegation that on or about December of
9 2018 or January 2019, that Chris Pender told employees
10 that the union was not going to get in and that the
11 union was not going to happen?

12 A I do not.

13 Q Do you have any firsthand information that on or
14 about December 2018 or January 2019, that Chris Pender
15 threatened employees at the Franksville profit center
16 that it would be futile for them to select the union as
17 their bargaining representative?

18 A I do not.

19 Q Do you have any firsthand information, sir, that
20 on or about April 22nd or 23rd, that Mr. Anderson
21 interrogated employees about their union sympathies?

22 A I do not.

23 Q Do you have any firsthand information that on or
24 about April 22nd or 23rd of 2019, that Mr. Anderson
25 interrogated employees at the Sunbelt Franksville

1 location about their union activities?

2 A I do not.

3 Q What is Sunbelt's fiscal year?

4 A 2018?

5 Q What is the fiscal year for Sunbelt?

6 A Is it June to June?

7 Q With respect to -- did the -- do you recall the
8 negotiation sessions starting with a safety moment?

9 A Yes.

10 Q Did you think the safety moment was a waste of
11 time, sir?

12 A No, absolutely not. And you actually provided us
13 to do a safety moment also.

14 Q And did the union take advantage of that offer?

15 A Yes, yes, we did.

16 Q At any time between March 1st of 2018 and the
17 present, did you receive any information that Sunbelt
18 did not have an intention of reaching an agreement with
19 Operating Engineers 139?

20 A No.

21 Q What percentage of Sunbelt's business out of
22 Franksville comes from walk-in customers?

23 A I don't know. I don't know. Walk-in as far as
24 what do you --

25 JUDGE ROSAS: There's no question.

1 THE WITNESS: Okay.

2 BY MS. HILL:

3 Q Okay. With respect to walk-in customers, do you
4 know how Sunbelt, at the Franksville location, received
5 business from customers?

6 A No.

7 Q And the 139 had represented one other equipment
8 rental company, correct?

9 A Yes.

10 Q And that was NES that was acquired by United,
11 correct?

12 A Yes.

13 Q And after United acquired that company, shortly
14 thereafter, United closed that location, correct?

15 MR. WIESE: Objection, relevance.

16 JUDGE ROSAS: Sustained.

17 BY MS. HILL:

18 Q And the 139 negotiating team asked to stop
19 negotiations early during the December negotiation
20 session, correct?

21 A I don't recall, Pat.

22 Q Would your notes reflect that, sir?

23 A Do you have a specific one you want me to look
24 at?

25 Q Well, it's the December negotiation session, sir.

1 2018, sir.

2 A Did you say December?

3 Q Yes, sir.

4 A I don't recall, Pat.

5 Q And there was one negotiation session where you
6 did not have the draft CBA that everyone was referring
7 to, correct?

8 A Yeah, I do recall that.

9 Q And Sunbelt provided you with a copy of it?

10 A I don't recall that.

11 Q But you did get a copy of --

12 A Well, I might have got it from the negotiating
13 team, from my -- from our negotiating team.

14 Q And the union, for several of these suggested
15 provisions that Sunbelt made, the union would not agree
16 to them because they were not the same as in your other
17 CBAs, correct?

18 A Please rephrase that question.

19 Q Okay. For some of the proposals that Sunbelt
20 made to the union, the union did not agree to them
21 because the language in the proposals did not -- was not
22 the same as --

23 A No.

24 Q -- the language in other CBAs?

25 A No.

1 Q Do you recall March 21st, 2019 when you asked
2 Sunbelt for a clean copy of Sunbelt's February 2019
3 proposals because you did not have them?

4 A I don't recall, Pat.

5 Q You attended a negotiation session in July of
6 2019, correct, with Sunbelt?

7 A Can I look in my notes?

8 Q Sure. I think it may be 687, if you look right
9 after -- because your notes don't have a legible number
10 on them.

11 A And what was the date you were asking?

12 Q You attended the negotiation session July 9th,
13 2019, correct?

14 A Yes, I did, yes.

15 Q And how long did that last?

16 A It looks like it lasted one hour and ten minutes.

17 Q Do you recall if the negotiation session had to
18 maybe perhaps take a break after about nine, ten
19 minutes?

20 A Yes.

21 Q And is that reflected in your notes?

22 A Oh, yeah, it is. Now I see it.

23 Q With respect to that session, was there a
24 discussion regarding Mr. Smith's termination?

25 A Yes.

1 Q Did you have a separate meeting with Mr. Mayfield
2 after the negotiation session took a break?

3 A I don't think we took a break. I think we ended
4 the negotiation session.

5 Q Well, do you recall a break after about nine or
6 ten minutes?

7 A Yes. It wasn't with Mr. Mayfield. It was with
8 you, Pat.

9 Q All right. It wasn't just with me based on your
10 notes, correct?

11 A Well, if you recall when -- when --

12 Q Well, let's go back to your notes. Who was the
13 there for the beginning of the negotiations?

14 A Just you and Bo.

15 Q Why do you have Bryan written here?

16 A That was -- because I know Jason did not show up
17 until like 9:37 that morning.

18 Q But --

19 A Bryan might have been there. I can't recall.

20 Q Now, there was a break after about nine or ten
21 minutes, correct?

22 A Correct.

23 Q When Mr. Mayfield did show up at the profit
24 center, did you meet with him without the rest of the
25 negotiating team?

1 A I met with you and him.

2 Q Okay. But Mr. Mayfield was there when you had a
3 discussion, correct?

4 A Yes.

5 Q And during that discussion, what was the topic?

6 A The topic was the adversarial start of the
7 meeting.

8 Q Did it also discuss Mr. Smith's termination?

9 A I don't recall, Pat.

10 Q Do you recall claiming that Mr. Smith had
11 never -- had told you that he had one -- he had missed
12 one safety quiz and was terminated?

13 A I do recall that only because Sunbelt said they
14 would never terminate an employee for not passing a
15 safety quiz.

16 Q Did Sunbelt inform you during that meeting that
17 he had several disciplinary write-ups prior to his
18 termination?

19 A Yeah, I do believe he did.

20 Q And Sunbelt offered to provide the union --

21 A Yes.

22 Q -- with copies of all the disciplinary actions,
23 correct?

24 A Yes.

25 Q And Sunbelt requested to receive an electronic

1 version of the TA proposals, correct?

2 A Yes.

3 Q And the union -- you, on behalf of the union,
4 said there would be a TA -- there would be an electronic
5 version sent to Sunbelt, correct?

6 A Well, it was that whole -- what was it, 60 --

7 Q 658?

8 A 659 or 658, yes.

9 Q To the end of 686, correct?

10 A Yes.

11 Q If you would look at 659, sir. Is any of the
12 handwriting on this yours, sir?

13 A Yes.

14 Q Could you identify it, please.

15 A I wrote "Sun Belt." I underlined -- or I
16 underlined, and underneath that underline I put "Sun
17 Belt" and "Accept" and "Reject." Then "Tentative
18 Agreement." And there was also another underline with
19 the "IUOE Union 139," and my signature above it.

20 Q Above it. The handwriting under the signature
21 line to the left, is that all of yours?

22 A No.

23 Q Any of it's yours?

24 A Some of it's mine.

25 Q Which?

1 A "Sun Belt, Incorporated."

2 Q Okay. "Sun Belt Rentals, Incorporated" or the
3 "Sun Belt" --

4 A You, Pat, you were the one that wrote "Rentals"
5 in there.

6 Q Okay. But the handwriting below?

7 A Is mine.

8 Q Okay. And the handwriting above that, two words
9 for "Sun Belt," is that your handwriting?

10 A "Sun Belt," yes.

11 Q As two words?

12 A Yes.

13 Q Thank you. And 660 is just a copy --

14 A Yes.

15 Q -- of 659, correct?

16 A Yes. Just for the record, I did not write "as
17 two page numbers." That's not my writing.

18 Q Oh, okay.

19 A I do believe that is your writing.

20 Q Okay. I just asked for your handwriting, sir.

21 A You asked if it was all my writing on that page.

22 Q Okay. But you wrote "Accept, Reject," the two
23 boxes. Is that your "X" in "Reject"?

24 A Yes.

25 Q And you wrote "Tentative Agreement," correct?

1 A Oh, wait, wait, let's -- "Accept" and "Reject."
2 I think that was your "X" to -- that references as to
3 those page numbers.

4 Q Okay. But sitting here today, are you positive,
5 sir?

6 A I'm not positive.

7 Q Thank you, sir. And you wrote the date on it,
8 correct?

9 A Yes, because that was our first official
10 authorized TA.

11 Q What is your definition of authorized TA?

12 A Somebody signing off on it, initialing it.

13 Q Because there was the earlier version of TA
14 provisions that the union had reviewed and said they
15 were accurate, correct?

16 A Yep.

17 Q And in fact Mr. McGowan said trust, but verify,
18 correct? He wanted to review --

19 A Yes.

20 Q -- the written proposals, correct?

21 A Yes.

22 Q All right. And you attended the negotiation
23 sessions in August with Sunbelt, correct?

24 A Yes.

25 Q And based on the negotiation sessions in

1 August -- well, how many were there that you recall?

2 A Probably two.

3 Q And the parties negotiated the severance for two
4 individuals who were being laid off, correct?

5 A Yes.

6 Q And the amount of severance that was proposed by
7 Sunbelt was -- the counterproposal from the union was
8 for an increased amount, correct?

9 A Yes.

10 Q And the parties agreed to the increased amount
11 for the two individuals being laid off, correct?

12 A Yes.

13 Q And during the negotiation sessions, Sunbelt
14 asked the union if it had any questions, correct?

15 A Yes.

16 Q And the parties discussed what the business was
17 going to be at the Franksville location based on the
18 reorganization, correct?

19 A Yes.

20 Q And it was Mr. Mayfield who led the discussion
21 regarding the reorganization, correct?

22 A Yes.

23 Q And Mr. Mayfield informed the union that the
24 Franksville location was going to be a will call
25 location?

1 A Yes.

2 Q And the equipment was going to be under 10,000
3 pounds at that location?

4 A I don't recall that. I don't recall the poundage
5 or size of the equipment.

6 Q And the union did not ask when would the big
7 equipment be removed from the Franksville location?

8 A I don't recall us asking that question.

9 Q And the union did not ask how the equipment was
10 going to be repaired at that location, correct?

11 A I think we did, Pat.

12 Q Where in your notes, sir?

13 A I'm just -- off the top of my head, I mean, you
14 know, the whole -- the whole thought was that you were
15 going to be laying these people off and you were going
16 to be, you know -- our thought was to have such a big
17 repair facility like that, that you would not use it to
18 repair anything there.

19 Q And so -- but the parties did not discuss having
20 the equipment that needed to be repaired sent to outside
21 vendors, correct?

22 A You did discuss or you did not discuss?

23 Q Did not discuss.

24 A Right.

25 Q And the parties did not discuss preventive

1 maintenance that had to be provided for the equipment at
2 the Franksville location?

3 A No.

4 Q And Mr. Mayfield indicated that the reason for
5 the reorganization at the Franksville location was
6 because of the economic impact from the bannering and
7 the inflatables that the union was using, correct?

8 A I don't recall that.

9 Q And Mr. McGowan at one point during one of the
10 negotiation sessions indicated that the bannering and
11 inflatables would continue, correct?

12 A I don't recall that, Pat.

13 Q Was the union's negotiating team surprised that
14 the impact of the bannering and inflatables was to
15 decrease business at the Franksville location?

16 MR. RYAN: Objection.

17 MR. WIESE: Objection, relevance.

18 JUDGE ROSAS: Repeat the question.

19 (Record read.)

20 JUDGE ROSAS: You're going to have to rephrase
21 that.

22 BY MS. HILL:

23 Q Were you surprised, sir, that the impact of the
24 bannering and inflatables created a decrease in business
25 for the Franksville location?

1 A No.

2 Q And was the purpose of the bannering and the
3 inflatables to decrease the business at Franksville?

4 MR. RYAN: Objection, your Honor, relevance.

5 JUDGE ROSAS: I'll allow it.

6 If you know.

7 THE WITNESS: No.

8 BY MS. HILL:

9 Q What was the purpose?

10 A To let the public know that we were trying to
11 negotiate an agreement with five members, five employees
12 that wanted to be union.

13 Q But your signs did not indicate there were five
14 employees who wanted to be unionized?

15 A No, it didn't say that.

16 Q Your signs for the inflatables indicated that
17 Sunbelt should take their southern ways south of the
18 Mason-Dixon line, correct?

19 MR. WIESE: Objection, relevance.

20 JUDGE ROSAS: I'm going to sustain the objection.

21 BY MS. HILL:

22 Q And one of the -- what was the purpose then of
23 the language on the signs for the inflatables?

24 A Pat, I --

25 MR. RYAN: Objection, your Honor.

1 JUDGE ROSAS: Sustained. It was bannerling.

2 MS. HILL: But it was to educate, so I want to
3 know what was the language on the banners.

4 MR. RYAN: Your Honor, the bannerling is a subject
5 of another proceeding.

6 JUDGE ROSAS: If you recall the language.

7 THE WITNESS: I don't recall the language.

8 BY MS. HILL:

9 Q Did you ever see the language on the signs?

10 A I probably have, but I don't recall them. I
11 wasn't part of -- again, we have an organizer that does
12 that.

13 Q And that's Mr. Ervin, correct?

14 A Yes.

15 Q So you didn't have to supervise Mr. Ervin's work,
16 correct?

17 A I did not.

18 Q Sunbelt informed the union that both of the
19 employees would be eligible -- who were being laid off
20 at the Franksville location, the two mechanics, that
21 they were eligible for rehire, correct?

22 A Yes.

23 Q And Sunbelt informed the union who they could
24 contact to get information regarding Cobra and rehiring,
25 correct?

1 A I don't recall, Pat.

2 Q And your notes, do they reflect that?

3 A My notes reflect it.

4 Q Pardon?

5 A My notes do reflect that we agreed to the Cobra.

6 But I'm sorry, just rephrase your question one more
7 time.

8 Q Okay. Did Sunbelt tell the union who their two
9 bargaining union members could contact if they had
10 questions regarding Cobra, paid time off, anything
11 relating to being -- applying for new jobs?

12 A I don't -- I can't remember, Pat.

13 Q Okay. And your notes do not reflect?

14 A No, that's what I'm saying, I do not see it in
15 there.

16 Q Your note -- and I'm sorry, I don't have the
17 number on this one. It is -- it looks like about the
18 fourth from the end. What --

19 A Would that be the date "8/16"?

20 Q "8/16." And this was the second negotiation
21 session regarding the severance for the individuals,
22 correct?

23 A I do believe so.

24 Q Were any safety issues raised during this time?

25 A I don't recall.

1 Q Could you --

2 A Can you rephrase that question as to what are
3 you --

4 Q Did the union raise any safety issues during this
5 negotiation session?

6 A I don't recall.

7 Q Would you please look -- read out loud what you
8 have written here below -- right across from "Jason" on
9 that line there. It looks like "I ask." 8/16/19, your
10 notes.

11 A "Ask date for week of Aug 19th," is that what
12 you're asking for?

13 Q No. I'm -- in the upper right-hand corner it
14 says "8/16/19." Do you have that one?

15 A Oh, I'm sorry, there it is, yes.

16 Q And then you see over in the left-hand margin
17 "Jason"?

18 A Yep.

19 Q Would you please read aloud the next three lines.

20 A "I ask about the response letter and an
21 explanation of her time frame" and the "Response to
22 letter."

23 Q And what were you referring to?

24 A Obviously I asked for a letter from you to send
25 to us.

1 Q From Sunbelt?

2 A Yes.

3 Q Regarding what?

4 A I don't recall, Pat.

5 MS. HILL: All right. No further questions at
6 this time. Pass the witness.

7 MR. RYAN: Can we take a break, your Honor?

8 JUDGE ROSAS: Okay. A few minutes.

9 (Recess.)

10 JUDGE ROSAS: On the record. Cross examination?

11 MR. WIESE: Not from the General Counsel, your
12 Honor.

13 JUDGE ROSAS: Charging Party, anything?

14 MR. RYAN: No questions, your Honor.

15 JUDGE ROSAS: Thank you, sir. You're excused.
16 Please do not discuss your testimony with anyone until
17 you're advised by counsel that the case is closed. All
18 right?

19 THE WITNESS: Thank you. I'll just close this
20 binder here.

21 JUDGE ROSAS: Okay. Next witness.

22 MS. HILL: Is Dan here?

23 THE WITNESS: Do I stay or do I have to leave?

24 JUDGE ROSAS: Daniel Marsolek?

25 MS. HILL: Yeah.

1 THE WITNESS: Can I stay or do I have to leave?

2 JUDGE ROSAS: Go ask your attorney.

3 THE WITNESS: Okay. Sorry.

4 JUDGE ROSAS: Mr. Marsolek, I'll remind you
5 you're still under oath.

6 THE WITNESS: Yes, sir.

7 DIRECT EXAMINATION

8 BY MS. HILL:

9 Q Thank you, sir. Mr. Marsolek, did you take any
10 photos of customers walking up to or into the Sunbelt
11 profit center in Franksville?

12 A If I did, it wasn't intentional. I don't know
13 what the customers or what employees were. There's
14 people in the pictures.

15 Q Did you speak to any of the people who were
16 walking up to or walking into the Franksville profit
17 center?

18 A No, ma'am.

19 Q Did you speak to Craig Putter from Putter
20 Transportation, sir?

21 MR. RYAN: Objection. Can I get some time frame?

22 JUDGE ROSAS: Provide a time frame.

23 MS. HILL: Well, it was at the Bradford High
24 School project, that might help with the time frame,
25 because I'm not exactly sure when he --

1 JUDGE ROSAS: What year?

2 MS. HILL: It would have been 2019.

3 MR. RYAN: What's the relevance of a conversation
4 there?

5 JUDGE ROSAS: We'll find out. Overruled.

6 THE WITNESS: I believe I did speak with him,
7 yes.

8 BY MS. HILL:

9 Q And it was Mr. Craig Putter himself, correct?

10 A I don't know who it was. It was a truck driver.

11 Q And did you -- and what do you recall telling
12 that individual?

13 MR. RYAN: Objection, relevance.

14 JUDGE ROSAS: Let's see what the question is.
15 Reserve on that for the moment.

16 MS. HILL: What the answer is?

17 JUDGE ROSAS: We have to get some foundation. Go
18 ahead.

19 BY MS. HILL:

20 Q Okay. What did you say to the individual?

21 A I handbilled him and handbilled --

22 JUDGE ROSAS: I'm sorry. What?

23 THE WITNESS: A handbilled the truck driver, and
24 there was someone else there as well, I don't know who
25 it was, that was part of the construction site, so I

1 handbilled that gentleman as well.

2 BY MS. HILL:

3 Q Okay. I just want to reserve your answer to
4 Putter Transportation, okay. So the other individual
5 you don't believe was with Putter Transportation?

6 JUDGE ROSAS: It hasn't been established that it
7 was Putter Transportation, Counsel.

8 MS. HILL: I thought he said the driver or did I
9 miss --

10 JUDGE ROSAS: A driver, correct.

11 THE WITNESS: A driver, yes.

12 JUDGE ROSAS: A driver, right.

13 BY MS. HILL:

14 Q Okay. Did he have the Putter Transportation logo
15 on his uniform or shirt?

16 A I don't recall.

17 Q You took photographs of individuals walking on
18 Franksville profit center property after the
19 reorganization, individuals who were wearing Sunbelt
20 shirts or high-vis vests, correct?

21 A High-vis, yes.

22 Q Did you speak to any of those individuals?

23 A No, ma'am.

24 Q During one of the negotiation sessions that you
25 attended, Sunbelt provided the union with a copy of the

1 safety quiz, correct?

2 A Yes, I believe so.

3 Q Do you have firsthand information, sir, that on
4 or about December of 2018 or January of 2019, that
5 Mr. Chris Pender told Franksville employees that the
6 union was not getting in at that location?

7 A I don't have any knowledge of any of that, no.

8 Q Do you have -- do you know of Chris Pender?

9 A I don't physically -- I don't know him
10 personally, no, I don't.

11 Q You never talked to him?

12 A I don't believe so, no.

13 Q Do you have any firsthand information that on or
14 about December 2018 or January 2019, that Mr. Chris
15 Pender threatened Franksville employees by stating it
16 would be futile for them to select the union as their
17 bargaining representative?

18 A I have no idea of that, no.

19 Q Do you have any firsthand information that
20 Mr. Bryan Anderson on or about April 22nd or April 23rd
21 of 2019 interrogated Franksville employees about their
22 union sympathies?

23 A I don't know anything about that, no.

24 Q Do you have any firsthand information that on or
25 about April 22nd or 23rd of 2019, that Mr. Anderson

1 interrogated Franksville employees about their union
2 activities?

3 A No, ma'am, I don't.

4 Q All right. You have two binders in front of you.

5 A Yes.

6 Q One is the blue and one is the black. Would you
7 please look at -- in the blue binder under No. 15, sir.

8 A 15?

9 Q Yes, sir.

10 A Okay.

11 Q All right. If you would go to the second page of
12 this exhibit, sir. It's the one -- the first page
13 should have at the bottom Exhibit GC 15, but then if you
14 go to the second page, you'll see in the middle of the
15 page GCX 15. Do you see that, sir?

16 A I do not have that, no.

17 Q I thought it was --

18 MR. RYAN: I thought it was a one page.

19 MS. HILL: I have -- it was given to me with the
20 second page on it. This one? Yeah. Here. This is how
21 you gave it to me, sir.

22 JUDGE ROSAS: Off the record.

23 MS. HILL: Off the record. I'm sorry.

24 (Discussion held off the record.)

25 ///

1 BY MS. HILL:

2 Q This was what was given to me. If you would look
3 at Exhibit 15, one page like this, sir.

4 A Yes, Negotiating Committee Ground Rules?

5 Q Correct. And then if you would please look --
6 and keep that open, sir, if you would. If you would
7 look in the black binder, the very last exhibit, it's
8 Exhibit 40 in that black binder.

9 A The very last page?

10 Q Well, it's not the last page. It's the last
11 exhibit, sir. It's No. 40. There should be a tab.

12 A I see it.

13 Q Okay. Now, go to the second page there, sir.

14 A Okay.

15 Q Which of these two documents was given to Sunbelt
16 during negotiation sessions?

17 A I would have to refer back to something. I don't
18 know. They look very similar.

19 JUDGE ROSAS: Well, the documents speak for
20 themselves, Counsel. You've going to have to try to
21 take him to the next level.

22 MS. HILL: Okay. I was about to, sir.

23 BY MS. HILL:

24 Q If you look at GCX 15, sir. That's in the blue
25 binder.

1 A Yes.

2 Q All right. Look at and read to yourself the
3 wording after No. 3.

4 A Uh-huh.

5 Q Does that refresh your recollection as to whether
6 this version was given to Sunbelt during negotiations?

7 A Which one are we referring to?

8 Q The blue binder --

9 A Blue binder.

10 Q -- okay, No. 3, sir, "Meetings will alternate
11 between Janesville Sand & Gravel and the Union locations
12 of choice."

13 Does that refresh your recollection that that was
14 the version that was given to Sunbelt?

15 A I would find it hard to believe that we would
16 give that to you being that it's not Sunbelt, it's
17 Janesville Sand & Gravel.

18 Q Do you recall negotiations --

19 A I remember -- I remember giving you a document,
20 yes. Whether it was this one or not, I don't know.

21 Q Okay. Thank you, sir. You can close both of
22 those binders, sir.

23 Do you recall a negotiation session in December
24 of 2019 in which the union said that it had to end
25 negotiations early because it had a conflict for later

1 in the day?

2 A That would be tough to pin it down to that day.
3 There was a lot happening in those negotiation sessions.
4 If I had notes to refer to or something I could, but I
5 don't. I don't remember.

6 Q Okay. You have your own notes that reflect
7 everything that was said?

8 A I don't -- no, I don't have any notes, no.

9 Q Okay. And -- well, perhaps no notes with you in
10 front of you, but did you take notes?

11 A I was not the note-taker, no.

12 Q At any time between March 1st of 2018 and the
13 present, were you told that Sunbelt did not have an
14 intention of reaching an agreement with Local 139, sir?

15 A No. By who?

16 Q By anyone, sir.

17 A No.

18 Q Do you know what percentage of the business at
19 the Franksville profit center came from walk-in
20 customers?

21 A No, ma'am.

22 Q During one of the negotiation sessions in August
23 of 2019, do you recall raising two issues regarding
24 safety violations by Sunbelt employees?

25 A It's hard to pin down an exact date. I --

1 Q I'm not asking for an exact date, so let's try it
2 a different way, sir.

3 A You said August of --

4 Q Let's try it a different way, sir.

5 Do you recall at any negotiation session you
6 stating that a driver for Sunbelt had violated a safety
7 rule?

8 A Yes, I believe I did.

9 Q And what did that safety violation involve?

10 A If it's the same one I'm thinking, I believe it
11 was a tie-off situation with a truck driver.

12 Q Meaning a tether?

13 A Being tied off to a lift, a safety -- a safety
14 harness to a lift, while on the lift.

15 Q And did you provide the location for that alleged
16 safety violation to anyone on Sunbelt's negotiation
17 team?

18 A I believe I did, yes.

19 Q And what -- where did you say it occurred?

20 A Maybe not the location, but I did give the
21 negotiation team a picture of the safety violation.

22 Q Did you provide the negotiation team the date for
23 that photograph?

24 A I thought I did, but I can't be sure. Bryan
25 Anderson is the one I gave it to. He asked for it.

1 Bryan Anderson asked for it. I gave it to him.

2 Q But sitting here today, sir, do you remember
3 giving it to him?

4 A Yeah, I do. He asked for it.

5 Q And what was the date?

6 A The date of -- when I gave it to him?

7 Q No. When the picture was taken.

8 A That I don't know.

9 MS. HILL: No further questions at this time of
10 this witness, your Honor.

11 JUDGE ROSAS: General Counsel?

12 MR. WIESE: No cross.

13 JUDGE ROSAS: Charging Party?

14 MR. RYAN: I don't have anything either.

15 JUDGE ROSAS: Thank you, sir. You're excused.

16 Please do not discuss your testimony with anyone until
17 you're advised the case is closed. Okay?

18 THE WITNESS: Yes.

19 JUDGE ROSAS: Thank you. Have a good day.

20 THE WITNESS: You, too.

21 MS. HILL: No further questions of any witness.

22 JUDGE ROSAS: You're done with the union's
23 witnesses?

24 MS. HILL: The individuals from the union, yes,
25 sir, I am.

1 JUDGE ROSAS: Okay. So does the Respondent rest?

2 MS. HILL: Yes, sir.

3 JUDGE ROSAS: Okay. Any rebuttal?

4 MR. WIESE: Not substantive, your Honor, just a
5 couple of issues before we close.

6 JUDGE ROSAS: Okay. Anything on your part?

7 MR. RYAN: No, your Honor.

8 JUDGE ROSAS: Okay. Go ahead.

9 MR. WIESE: First of all, with respect to the
10 Johnnie's Poultry's issue -- Johnnie's Poultry issues
11 that we discussed earlier, I prepared an Amendment to
12 the Consolidated Complaints addressing both of those
13 alleged violations which I'd like to offer.

14 JUDGE ROSAS: What do you have?

15 MR. WIESE: What?

16 JUDGE ROSAS: What do you have? What are you
17 offering?

18 MR. WIESE: General Counsel's 88.

19 JUDGE ROSAS: What's that?

20 MR. WIESE: It's the Amendment -- the written
21 Amendment to the Complaint.

22 JUDGE ROSAS: Yeah, I know. So it will be marked
23 General Counsel's Exhibit --

24 MR. WIESE: 88.

25 JUDGE ROSAS: No.

1 MR. WIESE: Okay.

2 JUDGE ROSAS: I'm playing the alphabet in my mind
3 here.

4 MR. WIESE: You'd like it as part of --

5 JUDGE ROSAS: General Counsel's Exhibit 1(LL) in
6 the formal papers. Show it to counsel so she can state
7 her position on the record. And let me look at a copy
8 of it.

9 MS. HILL: This is false. That isn't what the
10 witnesses said. This isn't true.

11 JUDGE ROSAS: It's denied?

12 MS. HILL: It is completely and totally denied.

13 JUDGE ROSAS: And you object to the Amendment --

14 MS. HILL: I object to --

15 JUDGE ROSAS: -- as prejudicial, all that stuff,
16 right?

17 MS. HILL: That, and wrong dates, wrong
18 information, wrong allegations. Denied.

19 JUDGE ROSAS: Okay. Overruled. It will be
20 received in the record. The record will have to tell me
21 what the answer is.

22 (GCX 1(LL) was received.)

23 JUDGE ROSAS: Okay. Is there anything else?

24 MS. HILL: And when do you want the record to
25 reflect that, sir?

1 JUDGE ROSAS: What's that?

2 MS. HILL: When do you want the record to reflect
3 that, sir?

4 JUDGE ROSAS: Well, it's part of the pleadings
5 now.

6 MS. HILL: Yes, sir. I know, sir.

7 JUDGE ROSAS: So in the -- well, I'm going to
8 address the briefing in a minute.

9 MS. HILL: Thank you, sir.

10 MR. WIESE: One more outstanding issue. With
11 respect to Respondent's Exhibit 9, which was a document
12 that was introduced in a redacted form yesterday, I
13 believe that the final admission of the document was
14 subject to an unredacted form being provided under seal.

15 JUDGE ROSAS: That was the financial information
16 on some customer invoices, Counsel?

17 MS. HILL: And I am really sorry, sir, but I had
18 over 1,080 photographs presented yesterday to me by the
19 union to review for purposes of direct examination today
20 and trying to be able to revise it, I didn't get to it.

21 JUDGE ROSAS: All right. Do you have it in your
22 possession somewhere?

23 MS. HILL: The redacted?

24 JUDGE ROSAS: No. The unredacted version?

25 MS. HILL: The unredacted, no, no.

1 JUDGE ROSAS: Okay. You'd have to get that from
2 the company?

3 MS. HILL: I would have to get it from the
4 company, yes.

5 JUDGE ROSAS: Okay. The record is going to be
6 closed with the exception of that document. It will be
7 subject to a motion to strike that exhibit in the event
8 that the Respondent does not provide the General Counsel
9 and Charging Party attorneys for their confidential
10 review, and we'll take it from there.

11 But what I envision is that there will be a
12 protective order, assuming there's no -- there's no
13 issue about it going into evidence, obviously I'll hear
14 whatever objections or arguments there are, and should I
15 need to make a ruling, I'll issue a ruling in writing.

16 But assuming the document is provided and
17 received, it will go under seal pursuant to a protective
18 order. And the amounts will not be referenced in any
19 briefing, nor referenced in any decision to be issued by
20 me, and it won't be accessible to the public nor put up
21 on the electronic filing system of the National Labor
22 Relations Board.

23 Okay. Is there anything else?

24 MR. WIESE: Just one clarification, your Honor.
25 If the amounts reflected in the underlying documents are

1 different than what is in the summary documents, are you
2 allowing us to make arguments there without actually
3 naming the numbers?

4 JUDGE ROSAS: Now, I asked some questions about
5 this yesterday. They were the two initial sheets that
6 had --

7 MS. HILL: Something redacted.

8 JUDGE ROSAS: No. Summary amounts. I think it
9 was a customer's name was redacted?

10 MS. HILL: Okay. We're looking at --

11 JUDGE ROSAS: Respondent's 9.

12 MS. HILL: -- Respondent's 9, and we're looking
13 at 0026 for the financial information on some of these
14 pages. I'm not going to identify which ones in
15 particular. Some have the back of the contract. But it
16 also has "Ordered By" and the individual's name
17 redacted.

18 MR. WIESE: Right.

19 MS. HILL: Okay. And then in the first page of
20 this exhibit, the -- at the top, "Lost Revenue," and
21 below -- in the far right column header, that redaction
22 the Board wants included. That's my understanding of
23 what you want, right?

24 MR. WIESE: Right. So I would like an unredacted
25 copy of 0024 and then the financial information --

1 JUDGE ROSAS: Well, see, I was asking yesterday
2 for clarification if the amounts that are shown on Page
3 24 and 25 of Exhibit -- of Respondent's Exhibit 9 were a
4 compilation of transactional amounts that follow in that
5 exhibit, and I got the impression that they weren't.

6 MS. HILL: Correct. And the first two pages had
7 already been testified to as a separate General Counsel
8 exhibit in the direct examination of Mr. Bogardus,
9 correct?

10 MR. WIESE: That's correct. And there was
11 testimony -- or not testimony, but statements made about
12 providing an unredacted copy at that time.

13 MS. HILL: All right. Let's get to the numbers,
14 that's what his Honor was just questioning.

15 JUDGE ROSAS: Let me just throw out a concept,
16 okay, and the concept is -- well, first of all, the
17 testimony was that this document, the first two pages of
18 Respondent's 9, was printed out by was it Mr. Mayfield
19 or Mr. Anderson?

20 MR. WIESE: I think it was Mr. Bogardus.

21 JUDGE ROSAS: Mr. Bogardus.

22 MS. HILL: Mr. Bogardus said he created this. He
23 was questioned about the numbers, and he said they were
24 rounded, so therefore --

25 JUDGE ROSAS: Did he generate this for the

1 litigation?

2 MS. HILL: No.

3 JUDGE ROSAS: He generated it at some point
4 during the bargaining?

5 MS. HILL: No, no.

6 JUDGE ROSAS: When did he generate it?

7 MS. HILL: All right. If you want specifics, I
8 need to go to this, the transcript, your Honor.

9 JUDGE ROSAS: Okay.

10 MS. HILL: Okay.

11 JUDGE ROSAS: While you're doing that, let me
12 just explain. If it's a data compilation based on other
13 information, presumably the General Counsel subpoenaed
14 that information, any information that this table would
15 have been based on --

16 MR. WIESE: Yes.

17 JUDGE ROSAS: -- then in all likelihood I assume
18 it would have been covered by a subpoena, so they'd be
19 entitled to that information.

20 If the information that's contained on the first
21 two pages isn't supported by the rest of this document,
22 what is it based on? Is it something he just asked the
23 computer to generate?

24 MS. HILL: All right. Let me go to his testimony
25 regarding Respondent's -- excuse me, General Counsel's

1 Exhibit 28.

2 MR. WIESE: Yep. It's on 662 and 663.

3 JUDGE ROSAS: What does General Counsel's 28 have
4 to do with Respondent's 9? Is it the same thing?

5 MR. WIESE: It's the same thing as the first
6 page.

7 JUDGE ROSAS: Oh, and we had discussed that, that
8 you had put that into evidence.

9 MS. HILL: Okay. What is Respondent's Exhibit 9
10 is what was kept in the regular course of keeping
11 business documents at one of the profit centers. It was
12 produced pursuant to -- this one was probably your
13 subpoena at the beginning.

14 MR. WIESE: Well, it was produced during the
15 unfair labor practice investigation.

16 MS. HILL: That's right, because this one has the
17 particular 28 on it.

18 JUDGE ROSAS: So the Board investigator requested
19 information, and this information was generated for the
20 investigator?

21 MR. WIESE: That's correct.

22 JUDGE ROSAS: Okay. And any subpoena that
23 requested information relating to revenue or the subject
24 of this document, which is Respondent's 8 [sic] as well
25 as General Counsel's 28, 28, would have been produced,

1 but none exists because this is all he generated,
2 correct?

3 MS. HILL: He only generated --

4 JUDGE ROSAS: The first two pages.

5 MS. HILL: The first two pages, yes, sir.

6 JUDGE ROSAS: Which is also the entirety of
7 General Counsel's 28, the first two pages?

8 MS. HILL: Yes, sir.

9 JUDGE ROSAS: All right. So that's that. So
10 again, the correlation of the remainder of Respondent's
11 8 [sic] to the first two pages.

12 MS. HILL: Okay. Mr. Anderson testified that he
13 was asked by Mr. Bogardus to give him the contracts in
14 which customers requested equipment to be returned to
15 the profit center due to the bannering and/or
16 handbilling, that type of activity, sir.

17 Mr. Anderson testified yesterday, and correct me,
18 gentlemen, if I'm wrong on this, that he put some, he
19 wasn't sure if he put all of them, of the contracts in a
20 folder, and he put it with what he had received from
21 Mr. Bogardus.

22 Am I wrong on that, gentlemen?

23 MR. WIESE: I recall the testimony coming in a
24 little differently than that, that these were the
25 documents that were relied on by, and I can't remember

1 if it was Mr. Anderson or Mr. Bogardus who said this,
2 but these documents were relied on in creating the
3 summaries that's in front of us.

4 MS. HILL: Mr. Bogardus was not asked about these
5 contracts, correct, or am I wrong?

6 MR. WIESE: I cannot recall at this time. Sorry.

7 MS. HILL: Okay. I believe that it was
8 Mr. Anderson who testified about 28 through the end of
9 this. He said he did not know -- you asked him
10 questions about the numbers on the chart, and he did not
11 know how those were created by Mr. Bogardus. He had
12 nothing to do with that. He did what he had to -- he
13 was requested to do by Mr. Bogardus by collecting these
14 contracts.

15 JUDGE ROSAS: I'm checking to see if you asked
16 Mr. Bogardus about Respondent's 9. Did you?

17 MS. HILL: Sir, right now, unless I looked at my
18 outline, I couldn't tell you.

19 JUDGE ROSAS: I'm just checking. Give me a
20 second.

21 I don't see that. Okay. So do you have
22 yesterday's transcript?

23 MS. HILL: No, sir.

24 JUDGE ROSAS: Oh, because he testified --

25 MS. HILL: He testified yesterday.

1 JUDGE ROSAS: He testified yesterday and --

2 MS. HILL: Right.

3 JUDGE ROSAS: -- Respondent's 9 was just
4 introduced yesterday.

5 MS. HILL: Correct. But I believe it was
6 introduced in Mr. Anderson.

7 JUDGE ROSAS: Through Anderson. Okay. Well, I
8 think it's simple to just do this. The top redacted
9 portion of Page 24 was a customer, the name of a
10 customer, is that what that was?

11 MS. HILL: As I said in response to a question, I
12 don't know, sir.

13 JUDGE ROSAS: That was clarified on the record.
14 Let's put it this way --

15 MR. WIESE: May I --

16 JUDGE ROSAS: -- any amounts that reflect --

17 MS. HILL: Sir, I don't know.

18 Mr. Wiese, I don't know.

19 JUDGE ROSAS: So I think --

20 MR. WIESE: Your Honor, I believe, and I
21 apologize for interrupting, but I believe that the
22 customers we were talking about started on Page 26 next
23 to the "Ordered By." Do you see those redactions up
24 there? I recall that that's --

25 JUDGE ROSAS: That's what that was.

1 MR. WIESE: That is the customer's name, correct?

2 MS. HILL: The individual's name.

3 MR. WIESE: The individual's name.

4 MS. HILL: Correct.

5 MR. WIESE: And I don't want that information. I
6 don't even need that information.

7 JUDGE ROSAS: No, so -- well, okay.

8 MS. HILL: Okay. So no, he doesn't wasn't the
9 name of the customer's employee, put it that way.

10 JUDGE ROSAS: So General Counsel and Charging
11 Party are entitled to verify whether the -- what
12 relationship, if any, the redacted financial information
13 on Pages 26 through 45 have to do with the first two
14 pages of Respondent's 9, okay? It's as simple as that.

15 MS. HILL: How are the attorneys going to
16 determine that, sir?

17 JUDGE ROSAS: What's that? Whether there was any
18 relationship?

19 MS. HILL: Whether there's a relationship
20 between -- because they had the opportunity to ask
21 Mr. Bogardus --

22 JUDGE ROSAS: No. Mr. Anderson you mean?

23 MS. HILL: No. Mr. Bogardus is the one who
24 introduced the first two pages, and that was through --

25 JUDGE ROSAS: Bogardus introduced the first two

1 pages of Respondent's 9?

2 MS. HILL: Yes.

3 JUDGE ROSAS: I don't see any reference to
4 Respondent's 9 in Mr. Bogardus' testimony.

5 MS. HILL: Okay. If you look in December, in
6 General Counsel's Exhibit 28. Is that correct?

7 JUDGE ROSAS: Oh.

8 MR. WIESE: Yes, that's right, that's when the
9 document was initially introduced.

10 MS. HILL: And that's when he was asked questions
11 about it, and then the remainder of the pages in
12 Respondent's 9 were from Mr. Anderson, okay.
13 Mr. Anderson did not know, because he was asked, what
14 was -- you know, was this used for Mr. Bogardus' report,
15 and he did not know, correct?

16 MR. WIESE: I honestly don't recall.

17 JUDGE ROSAS: He didn't know --

18 MS. HILL: Yeah.

19 JUDGE ROSAS: -- I think that sounds right.
20 Again, General Counsel introduced General Counsel's 28
21 back in December which is the first two pages of
22 Respondent's 9.

23 MS. HILL: Correct.

24 JUDGE ROSAS: But your version of Respondent's 9
25 has additional Pages 26 through 46 and --

1 MS. HILL: Because they were in the regular
2 course of how the business -- these business documents
3 were kept in a file folder.

4 JUDGE ROSAS: But the inference is that they have
5 some relationship to the first two pages, the
6 information on the first two pages of Respondent's 9,
7 correct?

8 MS. HILL: Okay. Based on what Mr. Anderson
9 said, he had received the two pages. He just kept them
10 in the file folder, and because they were kept that way,
11 your Honor, that's how I presented them, and
12 Mr. Anderson said he didn't have anything to do with
13 those first two pages. These he was asked by
14 Mr. Bogardus to collect, and he put them in a file
15 folder that just happened to also include these first
16 two pages, sir.

17 JUDGE ROSAS: They're kept in the regular course
18 of business by Mr. Anderson together, so there's a
19 plausible inference that there's some connection between
20 them or not. To be determined. So again --

21 MS. HILL: Do you want to reopen the hearing for
22 questions regarding that, sir?

23 JUDGE ROSAS: I think Mr. Anderson's testimony
24 was not conclusive in that regard, so -- and you have
25 this exhibit compiled as such, so --

1 MS. HILL: Because that's how it was delivered.

2 JUDGE ROSAS: Yeah. So again, the ruling
3 yesterday was that the exhibit would be received
4 conditionally upon the unredacted version being provided
5 to counsel subject to -- and again, maybe they won't put
6 it into evidence and you won't need -- they can return
7 it to you, and you won't need a protective order, and it
8 won't have to go under seal, or if it's -- they move it
9 into evidence, then it will go into evidence subject to
10 a protective order under seal.

11 MS. HILL: Okay. So what the General Counsel and
12 the union's attorney and your Honor want is Pages 26
13 through 46 to have only the numbers provided, correct?

14 JUDGE ROSAS: Unredacted.

15 MS. HILL: Unredacted. Name of course can be
16 redacted.

17 And that's all that you want for this, correct?

18 MR. WIESE: No, that is not correct, because --

19 MS. HILL: All right. Calmly say it.

20 JUDGE ROSAS: What do you want?

21 MR. WIESE: I would also like the information
22 that's redacted on General Counsel Exhibit 28 to at
23 least -- General Counsel Exhibit 28, Respondent's
24 Exhibit 9, they're the exact same thing. I want that
25 information to be provided in an unredacted form, or at

1 least for the redaction to be identified, which is what
2 we agreed to during the first week of the hearing. And
3 I do have the transcript cites from that handy if you'd
4 like.

5 MS. HILL: Okay. I will disagree with one
6 statement from General Counsel is that these two
7 documents, these two pages are not identical, all right.
8 First of all, your -- page two wasn't in your exhibit,
9 or is my exhibit wrong?

10 JUDGE ROSAS: 28 is the first two pages of 9.

11 MR. WIESE: Just the first page.

12 MS. HILL: It's the first page.

13 JUDGE ROSAS: No. I thought you had the second
14 page also?

15 MS. HILL: No, not what he gave me.

16 MR. WIESE: So General Counsel Exhibit 28 is the
17 exact same as the first page of Respondent's Exhibit 9.

18 JUDGE ROSAS: No. Oh, it's 29.

19 MR. WIESE: 29 is page two of the exhibit, but --

20 JUDGE ROSAS: General Counsel's 28 and 29 are the
21 first two pages of Respondent's 9?

22 MR. WIESE: Correct.

23 MS. HILL: Correct. And the second difference is
24 that your exhibit has Page 1 of 1, Respondent's Exhibit
25 9 does not have that, okay, just pointing that out.

1 JUDGE ROSAS: All right. So Counsel, you're
2 concerned about the redacted portions of Respondent 9 as
3 being unnecessary as far as producing the unredacted
4 version?

5 MS. HILL: Well, as I stated yesterday, and I'll
6 state it again today, it's the numbers that Sunbelt is
7 concerned about for the reasons I laid out yesterday.

8 JUDGE ROSAS: So these are -- these are monetary
9 sums that are redacted presumably?

10 MS. HILL: On 26 to the end, yes, sir.

11 JUDGE ROSAS: No, no. On 24.

12 MS. HILL: On 24. As I stated yesterday, I don't
13 know what that --

14 JUDGE ROSAS: So that's to be determined, that's
15 to be ruled upon by me if it's -- if it's a customer
16 name or some trademark or I don't know what, you know.
17 If they're monetary sums, perhaps that's a different
18 story.

19 MS. HILL: Okay. So you have to rule on that.

20 JUDGE ROSAS: Uh-huh.

21 MS. HILL: And just so I'm clear, you've already
22 ruled that 26 through the end, once the numbers are
23 unredacted, that that will be considered to be under
24 seal and not to be disclosed by the General Counsel or
25 by the union's attorney, correct, to anyone?

1 JUDGE ROSAS: Should it go into evidence. If
2 it's -- if they don't need it to go into evidence, then
3 they can just return it to you or affirm to you that
4 they're -- that they've shredded it.

5 MS. HILL: Okay.

6 JUDGE ROSAS: Okay?

7 MS. HILL: Now, anything else?

8 MR. WIESE: No. That was it. Thank you for your
9 patience.

10 MS. HILL: Okay. Now, the next big question is,
11 as I explained to Mr. Wiese, that when we finished
12 yesterday, it was after regular hours at my office,
13 there was no way I could get this done, and we were here
14 early, too, so I could not get these unredacted or
15 anything.

16 JUDGE ROSAS: Understood.

17 MS. HILL: All right. I also was busy, as I said
18 a few minutes ago, with 1,000 some odd pictures to go
19 through.

20 The big question. When do you want these?

21 JUDGE ROSAS: Well, you're going to have more or
22 less 35 days for briefing, so when are you in a position
23 to get them from the client?

24 MS. HILL: As soon as I can get back to the
25 office, and I'll even try to -- what concerns me, sir,

1 is because the first -- the first page is from
2 Mr. Bogardus, and he has had that family emergency, so
3 it might be next week, sir.

4 MR. WIESE: A week is fine.

5 JUDGE ROSAS: Yeah.

6 MR. WIESE: You can get it to me in a week,
7 that's fine.

8 JUDGE ROSAS: That shouldn't be a problem because
9 you'll -- under the contract, you'll get the transcripts
10 and exhibits in 10 business days and -- within 10
11 business days, you know, 35 days for filing briefs, so a
12 week should be fine.

13 MR. WIESE: Yeah, yeah.

14 JUDGE ROSAS: Okay?

15 MS. HILL: Okay. Now, there was something that I
16 heard, and I want to understand, if there's -- is the
17 briefing regarding the relationship -- is there going to
18 be briefing regarding the relationship between these two
19 sections of Respondent's 9? He said he wanted to know
20 the relationship between them.

21 JUDGE ROSAS: Are you talking about briefing on
22 that issue alone?

23 MS. HILL: That's what I was -- I thought I heard
24 something --

25 JUDGE ROSAS: Well, we can have a conference call

1 or we can just discuss it via e-mail --

2 MS. HILL: Okay. Is that what you want --

3 JUDGE ROSAS: -- and I'll make a ruling.

4 MS. HILL: -- Mr. Wiese? Maybe I misheard.

5 MR. WIESE: I just want the evidence in the
6 record in an unredacted form to make whatever arguments
7 that --

8 MS. HILL: Okay. Just the evidence you want, you
9 don't want anything else, and then once you get the
10 unredacted document, then you'll decide whether Exhibit
11 9 is admitted or not admitted, correct?

12 JUDGE ROSAS: Uh-huh, correct.

13 MS. HILL: Thank you.

14 JUDGE ROSAS: Okay. So that concludes the
15 evidence and testimony to be produced in this case,
16 except for the issue that we just discussed with respect
17 to Respondent's Exhibit 9 and General Counsel's Exhibits
18 28 and 29. I will give the parties until March 20th,
19 2020 to submit proposed findings of fact and conclusions
20 of law for my consideration. I'll refer the parties to
21 the Board's rules and regulations for the submission
22 thereof.

23 As far as the Charging Party and Respondent are
24 concerned, you'll be forewarned that filing in the
25 electronic filing room, you want to be careful that you

1 don't file it in the Regions portion of the filing room,
2 as you've done up to this point, but in the drop-down
3 selection for the Division of Judges in Washington.

4 And I also request courtesy copies to be e-mailed
5 to me simultaneous with the electronic filing of the
6 proposed findings of fact and conclusions of law.

7 Okay. There being nothing else?

8 MS. HILL: Courtesy --

9 JUDGE ROSAS: Anything else?

10 MS. HILL: Excuse me. You said courtesy copy?

11 JUDGE ROSAS: E-mailed to me

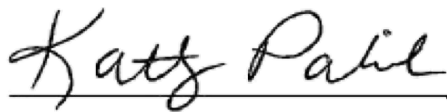
12 MS. HILL: E-mailed, okay.

13 JUDGE ROSAS: There being nothing else? Okay. I
14 thank counsel for a very courteous, yet tenaciously
15 advocated case on behalf of your clients. The record is
16 now closed. Thank you very much.

17 (End of proceedings at 3:11 p.m.)
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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 18, Subregion 30, in the matter of SUNBELT RENTALS, INC., Case Nos. 18-CA-236643, 18-CA-238989, and 18-CA-247528, at Milwaukee, Wisconsin, on February 19, 2020 was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

A handwritten signature in cursive script, reading "Kathy Pabich", is written over a horizontal line.

KATHY P. PABICH, CSR